

Public Housing Occupancy Guidebook



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Public Housing and Voucher Programs
Public Housing Management and Occupancy Division

June 2003



Table of Contents

INTRODUCTION	1
Part 1: Civil Rights	2
Part 2: Admissions.....	2
Part 3: Public Housing Income and Program Rents	3
Part 4: Continued Occupancy	4
Part 5: The Public Housing Lease	5
Part 6: Grievance Procedure.....	6
Part 7: Domestic Violence	6
Appendices	7
PART 1: CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS	
CHAPTER 1. CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS	9
1.0 General Provisions	9
1.1 Nondiscrimination Laws.....	9
Fair Housing Act - 42 U.S.C. 3601 (also known as Title VIII of the Civil Rights Act) (24 CFR Part 100 et seq).....	10
Title VI of the Civil Rights Act of 1964 (24 CFR Part 1).....	11
Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8)	12
Title II of the Americans with Disabilities Act.....	12
Age Discrimination Act of 1975 (24 CFR Part 146).....	13
Obligation to Affirmatively Further Fair Housing (24 CFR § 960.103 (b))	13
Improving Access to Services for Persons with Limited English Proficiency (LEP).....	13
Other Applicable Laws and Regulations	14
Effect of More than One Applicable Law or Regulation.....	14
Program Reporting and Record Keeping (24 CFR § 107.30 and 24 CFR § 1.6(b)).....	14
Discrimination Complaints.....	15
1.2 Affirmative Disability-Related Civil Rights Requirements Under Section 504 of the Rehabilitation Act and the Fair Housing Act	15
Who is a Person with a Disability under Federal Civil Rights Laws	15
Exclusion of Individuals Who Pose a Direct Threat to Health or Safety of Others.....	17
Accessibility in Communication.....	17
Reasonable Accommodations.....	17
Reasonable Accommodations in the Admissions/Occupancy Process	18
Civil Rights Requirements Related to Verification/Inquiries About Disability (24 CFR § 100.202).....	19
1.3 Affirmative Marketing and Other Affirmative Obligations	20
PART 2: ADMISSIONS TO PUBLIC HOUSING	
CHAPTER 2. ELIGIBILITY FOR ADMISSION.....	23
2.0 Overview.....	23
2.1 Annual Income (24 CFR § 5.609)	23
Income for Eligibility	23



Definition of Annual Income	24
2.2 Eligible Family Status (24 CFR § 5.403)	24
Definitions of Eligible Families	24
Citizenship and Eligible Immigrant Status (24 CFR § 5.506).....	27
Disclosure of Social Security Numbers (24 CFR § 5.216).....	28
Ineligibility Because of Criminal Activity (24 CFR § 960.204).....	28
CHAPTER 3. WAITING LIST ADMINISTRATION	29
3.0 Overview.....	29
3.1 Entering New Applications on the Waiting List	30
3.2 Opening and Closing the Waiting List or Sub-List	31
3.3 Essential Application Information for Waiting List Placement.....	31
3.4 Community-Wide and Site-Based Waiting Lists	32
3.5 Moving From Community-Wide to Site-Based Waiting List	33
3.6 Preferences	33
Considerations Before Applying Preferences	34
Local and Ranking Preferences	34
Change in Preference Status While on the Waiting List	37
Meeting for Applicants Denied a Preference (24 CFR § 5.410(g))	37
3.7 Updating a Waiting List	38
Preparing the Update Package	38
Disseminating the Update Package	38
Applicants Who Fail to Respond: Second Notice	39
Reasonable Accommodation of Applicants with Disabilities	39
Completing the Waiting List Update	40
3.8 Removing Applicants from the Waiting List.....	40
Withdrawing an Application From the Waiting List.....	40
Rejecting an Application for Public Housing (24 CFR § 960.203)	41
Removing or Dropping an Application for Refusal of a Unit Offer.....	42
3.9 Designated Housing	42
3.10 Designated Housing Plan (PIH Notice 97-12)	42
3.11 Implementing a Designated Housing Plan	44
CHAPTER 4. QUALIFICATION FOR ADMISSION: APPLICANT SELECTION CRITERIA	47
4.0 Overview.....	47
4.1 Selection Policy and Procedures	47
4.2 Applicant Screening: The Policy Statement.....	48
4.3 Screening Procedures	49
4.4 The Application Form and Screening.....	49
4.5 Explaining the Screening Process.....	50
4.6 Techniques and Procedures Used to Check an Applicant's History	50
Past Performance Meeting Financial Obligations, Especially Rent (24 CFR § 960.203(c)(1)).....	50
Disturbance of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect the Health, Safety or Welfare of Other Tenants, or Cause Damage to the Unit or the Development (24 CFR § 960.203(c)(2)).....	51
Involvement in Criminal Activity on the Part of Any Applicant Family Member that Would	



Adversely Affect the Health, Safety or Right to Peaceful Enjoyment of the Premises by Other Tenants (24 CFR § 960.203(c)(3) and 960.204).....	53
Questions on History or Current Use of Illegal Drugs.....	54
A Record of Eviction from Housing or Termination from Residential Programs.....	54
Ability to Comply with the Terms of the PHA Lease.....	55
Misrepresentation of any Information Related to Eligibility, Preferences, Allowances, Family Composition or Rent.....	55
4.7 Processing the Screening Verification Forms	55
4.8 Preliminary Recommendation of Admission or Rejection	56
4.9 Notice and Right to Dispute Rejection.....	57
4.10 Applicants with Disabilities.....	58
4.11 Role of Residents in Applicant Selection (24 CFR § 964.135)	61
CHAPTER 5. OCCUPANCY GUIDELINES	62
5.0 Overview.....	62
5.1 State and Local Codes.....	62
5.2 Sizes and Configuration of PHA Units.....	62
5.3 Capacity of Sites, Systems and Infrastructure	63
5.4 Individual Family Characteristics	63
5.5 Making the Best Use of Available Units.....	65
CHAPTER 6. PROCESSING APPLICATIONS	67
6.0 Overview.....	67
6.1 Compliance with Law, Regulations and PHA Policies	68
6.2 Accessibility and Plain Language (24 CFR §§ 8.6 and 8.21)	68
6.3 Accepting Applications for Housing.....	68
6.4 Initial Eligibility Determination (24 CFR § 960.201).....	70
6.5 Applying the Preference System (24 CFR § 960.206).....	71
6.6 Completing/Updating the Application	72
6.7 Applying Applicant Selection Criteria (24 CFR § 960.202 – 205).....	73
6.8 Income Targeting, Income Mixing and Deconcentration.....	74
Income Targeting (24 CFR § 960.202).....	74
6.9 Unit Assignment	75
Applicant Selection Criteria Determination	76
Waiting List Position.....	76
Occupancy Standards	76
Accessibility Issues.....	77
6.10 Unit Offers to Applicants	77
6.11 Leasing	78
6.12 Pre-Occupancy Training or Orientation.....	79
CHAPTER 7. VERIFICATION STANDARDS.....	80
7.0 Overview	80
7.1 What Must Be Verified	82
7.2 Verifying Social Security Numbers	83
7.3 Verifying Citizenship or Eligible Noncitizen Status	84



Evidence of Citizenship or Eligible Immigration Status	85
Verification of Eligible Immigrant Status Using the INS SAVE System.....	86
7.4 Verifying Annual Income	86
Dealing with Families that Report No Income.....	88
7.5 Up-Front Income Verification	88
7.6 Limitations on Verifications Related to Disabilities and Medical Information.....	90
7.7 Verifying Applicant Selection Criteria	94
Verifying Past Performance Meeting Financial Obligations, Especially Rent and Utilities (24 CFR 960.203 (c)(1)).....	94
Verifying Disturbance of Neighbors, Destruction of Property, or Living or Housekeeping Habits that Would Pose a Threat to Other Tenants (24 CFR § 960.203(c)(2)).....	95
Screening for a History of Criminal Activity on the Part of Any Applicant Family Member that Would Adversely Affect the Health, Safety or Welfare of Other Tenants (24 CFR § 960.203(c)(3))	96
A Record of Eviction From Housing or Termination From Residential Programs.....	97
Ability and Willingness to Comply With the Terms of the PHA Lease.....	98
7.8 Misrepresentation of Any Information Related to Eligibility, Award of Preference for Admission, Allowances, Family Composition or Rent	98
7.9 Acceptable Forms of Verification.....	98
7.10 Duration of Acceptable Verification	99
7.11 File Documentation.....	99
CHAPTER 8. TENANT SELECTION AND ASSIGNMENT PLAN	101
8.0 Overview.....	101
8.1 Unit Offers to Applicants.....	101
Plan A: One Unit Offer.....	102
Plan B: Two or Three Unit Offers.....	102
8.2 Comparison of Plan A and Plan B.....	103
8.3 Community-Wide and Site-Based Waiting Lists	103
8.4 Due Process Rights for Applicants	104
8.5 Good Causes for Applicant Refusal of Unit Offer	104
8.6 Determining Which Unit to Offer When More Than One Is Available	105
8.7 Uniform Federal Accessibility Standards (UFAS) Accessible or Adaptable Dwelling Units.....	106
8.8 Leasing and Occupancy of Dwelling Units	106
8.9 Transfers of Tenants	106
CHAPTER 9. LEASING REQUIREMENTS	108
9.0 Overview.....	108
9.1 General Leasing Policy	108
9.2 Move-in Inspections	108
9.3 Additions to the Household	109
9.4 Family Sizes and the Transfer Requirement	109
9.5 Visitors, Guests and Unauthorized Occupants	109
PART 3: PUBLIC HOUSING INCOME AND PROGRAM RENTS	
CHAPTER 10. INCOME AND PROGRAM RENTS	112



10.0 Overview	112
10.1 Annual Income (24 CFR § 5.609)	112
Amounts Included in Annual Income	113
Amounts Excluded from Annual Income (24 CFR § 5.609(c))	116
Treatment of Assets and Determining Income from Assets	121
Definition of Net Family Assets (24 CFR § 5.603)	121
10.2 Adjusted Income – Statutory Deductions (24 CFR § 5.611)	122
Dependent Deduction	123
Elderly and Disabled Family Deduction	123
Child Care Deduction	123
Disability Expense Deduction	124
Unreimbursed Medical Expense Costs	125
The 3 Percent “Deductible” for Disability and Medical Deductions	126
The 3 Percent “Deductible” with Both Unreimbursed Medical and Disability Expense Deductions	127
10.3 Adjusted Income – Permissive Deductions	127
How Deductions Affect Rent	129
Impact on PHA Operating Budget	130
10.4 Income-Based Rent and Minimum Rent	130
How Optional Changes to Income-Based Rents Work	131
Optional Changes in the Percentage of Rent Paid	133
Other Reasonable Systems	134
10.5 Ceiling Rents	134
10.6 Flat Rents	135
Overview	135
Setting Flat Rents Properly (24 CFR § 960.253(b))	135
Rent Choice (24 CFR § 960.253)	136
Reexamination (24 CFR § 960.253)	137
Switching from Flat Rent to Income-Based Rent Because of Hardship (24 CFR § 960.253)	137
Annual Review of Flat Rents (24 CFR § 960.253)	137
10.7 Relationship Between Rents and Utility Allowances	138
10.8 Utility Reimbursement	139
10.9 Earned Income Disallowance	139
Overview	139
Terminology	139
Qualifying for a Disallowance	140
Disallowance Amounts (24 CFR § 960.255 (b))	141
Disallowance Periods (24 CFR § 960.255 (b))	142
Maximum Disallowance Period	143
Earned Income Disallowance Examples	144
Individual Savings Account (24 CFR § 960.255 (d))	145

PART 4: CONTINUED OCCUPANCY OF PUBLIC HOUSING

CHAPTER 11. TRANSFERS	147
11.0 Overview	147
11.1 Types of Transfers	147



11.2 Priorities Among Types of Transfers.....	148
11.3 When Transfers Take Precedence Over Waiting List Admissions	148
11.4 Mandatory and Optional Transfers.....	149
11.5 Split Family Transfers.....	149
11.6 Eligibility for Transfers.....	150
11.7 Cost of Transfers.....	150
11.8 Processing Transfers.....	150
11.9 Sample Transfer Policy	151
CHAPTER 12. ANNUAL REEXAMINATION OF INCOME AND FAMILY CIRCUMSTANCES.....	152
12.0 Overview	152
12.1 Qualification for Continued Occupancy.....	152
12.2 Annual Reexamination	153
Reexamination of Income (24 CFR § 960.257).....	154
Reexamination of Family Composition.....	155
Choice of Rent.....	156
Community Service/Economic Self-Sufficiency Requirement.....	156
12.3 Remaining Family Members and Prior Debt.....	156
12.4 Change in Reexamination Date	157
12.5 Zero Income Families	157
12.6 Special Reexaminations	157
12.7 Determination of Need for Transfer	157
CHAPTER 13. INTERIM RENT ADJUSTMENTS	159
13.0 Overview	159
13.1 Required Interim Rent Reductions.....	159
Minimum Rent Hardship Exemption	159
Decrease in Income of Families Paying Income-Based Rent.....	160
Change in Circumstances (Increase in Eligible Deductions) of Families Paying Income-Based Rent.....	160
Hardship of Families Paying Flat Rent (24 CFR § 960.253 (f)).....	161
13.2 Approaches to Interim Rent Increases	161
Fixed Rent System.....	161
Interim Rent System.....	162
Hybrid Rent System.....	162
13.3 Effective Date of Adjustments (24 CFR § 966.4 (3)(b))	163
13.4 Timely Reporting of Accurate Information	163
13.5 Imputed Welfare Income (24 CFR § 5.615)	164
Overview.....	164
Economic Self-Sufficiency Requirements.....	164
When the PHA Must Not Reduce Rent.....	164
When the PHA Must Reduce Rent.....	165
Verification Standards	165
Method for Imputing Welfare Income.....	166
Offsetting Imputed Welfare Income with Additional Income	166
Imputed Welfare Income Example	166
Imputed Welfare Income and Earned Income Disallowance.....	167



CHAPTER 14. UTILITIES.....	168
14.0 Overview	168
14.1 Resident-Paid Utilities	169
14.2 PHA-Paid Utilities.....	170
14.3 Utility Allowances	170
14.4 Utility Reimbursement	171
14.5 Reasonable Accommodation of Residents With Disabilities (24 CFR § 965.508)	172
CHAPTER 15. COMMUNITY SERVICE AND ECONOMIC SELF-SUFFICIENCY	173
15.0 Overview	173
15.1 How PHAs Can Administer Community Service/Self-sufficiency Programs.....	173
15.2 Eligible Community Service Activities	174
15.3 Eligible Self-sufficiency Activities	174
15.4 Exempt Residents.....	175
15.5 Noncompliant Residents.....	176
15.6 Other HUD Requirements	176
15.7 Resident Responsibilities	176
15.8 Change in Exempt Status	177
15.9 No Substitution of Community Service Workers for PHA Employees.....	177
CHAPTER 16. PET POLICIES/ASSISTANCE ANIMALS.....	178
16.0 Overview	178
16.1 Non-Applicability of Pet Policies to Assistance Animals	178
16.2 Comparison of Pet Policy Requirements for Elderly and General Occupancy Developments	179
16.3 PHA Pet Policy Practices	183
 PART 5: THE PUBLIC HOUSING LEASE	
CHAPTER 17. GENERAL PUBLIC HOUSING LEASE REQUIREMENTS	185
17.0 Overview	185
17.1 Required lease provisions: Changes mandated by the Quality Housing and Work Responsibility Act of 1998	186
17.2 Prohibited Provisions.....	187
17.3 Optional Provisions: Reasonableness Tests	189
17.4 Reasonableness Test.....	190
17.5 Relationship of the Public Housing Lease to Occupancy Policies.....	190
17.6 Public Housing Lease Requirements	191
Required Provisions	191
Parties, Dwelling Unit and Term (24 CFR § 966.4(a)).....	191
Payments Due Under the Lease (24 CFR § 966.4 (b)).....	192
Redetermination of Rent and Family Composition (24 CFR § 966.4 (c)).....	193
Tenant's Right to Use and Occupancy (24 CFR § 966.4 (d)(1)).....	194
The PHA's Obligations (24 CFR § 966.4 (e)).....	195
Tenant's Obligations (24 CFR § 966.4 (f)).....	197
Tenant Maintenance (24 CFR § 966.4 (g))	198
Defects Hazardous to Life, Health or Safety (24 CFR § 966.4 (h)).....	199



Pre-Occupancy and Pre-Termination Inspections (24 CFR § 966.4 (i)).....	199
Entry of Dwelling Unit During Tenancy (24 CFR § 966.4 (j)).....	200
Notice Procedures (24 CFR § 966.4 (k)).....	200
Termination of Tenancy and Eviction (24 CFR § 966.4 (l)) Grounds for Termination	201
Eviction: Right to Examine PHA Documents Before Hearing or Trial (24 CFR § 966.4 (m)).....	205
Grievance Procedures (24 CFR § 966.4 (n)).....	205
Provision for Lease Modification (24 CFR § 966.4 (o))	205
Signature Clause	205
17.7 Posting of Policies, Rules and Regulations (24 CFR § 966.5)	205
17.8 Accommodation of Persons with Disabilities (24 CFR § 966.7)	206

PART 6: PUBLIC HOUSING GRIEVANCE PROCEDURE

CHAPTER 18. THE GRIEVANCE PROCEDURE	208
18.0 Overview	208
18.1 Applicability (24 CFR § 966.51)	208
18.2 Due Process Determinations by HUD (24 CFR § 966.51 (a)(2)).....	209
18.3 Informal Settlement (24 CFR § 966.54).....	209
18.4 Formal Grievance Hearing (24 CFR § 966.55 (a))	210
18.5 Selecting the Hearing Officer or Hearing Panel (24 CFR § 966.5 (b)).....	210
18.6 Escrow Deposits (24 CFR § 966.5 (e)).....	211
18.7 Scheduling Hearings (24 CFR § 966.55 (f)).....	212
18.8 Procedures Governing the Hearing (24 CFR § 966.56)	212
18.9 Decision of the Hearing Officer or Panel (24 CFR § 966.57).....	213

PART 7: DOMESTIC VIOLENCE

CHAPTER 19. DOMESTIC VIOLENCE.....	216
19.0 Overview	216
19.1 Why A Domestic Violence Preference	217
19.2 Types of Evidence Required as Proof of Domestic Violence	217
19.3 Screening and Admission	218
19.4 Continued Occupancy and Transfer Policies.....	218
19.5 Eviction and Termination	219
19.6 Tools PHAs May Use	219
19.7 Best Practices.....	220
ENDNOTES	222

APPENDICES

APPENDIX I.	GUIDE TO FEDERAL REGULATIONS
APPENDIX II.	DEFINITIONS OF TERMS
APPENDIX III.	SAMPLE ADMISSIONS AND CONTINUED OCCUPANCY POLICY
APPENDIX IV.	SAMPLE PUBLIC HOUSING AUTHORITY LEASE AGREEMENT
APPENDIX V.	SAMPLE PUBLIC HOUSING AUTHORITY GRIEVANCE PROCEDURE
APPENDIX VI.	SAMPLE COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY



APPENDIX VII.	PET OWNERSHIP POLICY OUTLINE
APPENDIX VIII.	SAMPLE VERIFICATION FORMS



Introduction

This Guide is designed to assist public housing authority staff and HUD with a range of issues related to public housing occupancy, from application for admission and rent calculations through ongoing occupancy to lease termination. The guidebook is intended to provide a handy reference for all aspects of admissions and occupancy administration. The Guide is divided into seven parts, as described below.

In addition, the creation of this Guide furthers the Department's Rental Housing Integrity Improvement Project (RHIIP), a Secretarial priority intended to reduce income and rent errors addressing issues identified in the *Quality Control for Rental Assistance Subsidies Determinations*, a study completed by the Department in 2001.

Across HUD programs, this study estimates subsidy overpayments of \$1.669 billion and underpayment errors of \$634 million. Additional subsidy overpayments are attributed to tenant under-reporting of income – with recent annual estimates ranging from \$600 million to \$900 million. In public housing, errors in determining earned income are the largest contributor to these numbers followed by inaccuracies in calculating social security, pension, disability survivor's income, and the miscalculation of other income. The issue of quality control in rent determinations has two effects: under-reported income and residents' overpayment of rent. This Guide will serve as a useful quality control tool and includes detailed and substantive information on the components of annual income and the correct calculation of rent. The Guide makes this information readily accessible to anyone in the public housing field charged with the responsibility to complete these as well as other admissions and occupancy tasks.

Unlike the federal regulations, which are program requirements, some of the material in this Guide represents suggestions, practical ideas, or good management practice from successful PHAs. The authors have attempted to distinguish between elements that are mandatory and those that are simply suggestions by limiting the use of the terms must and shall, to statutory or regulatory requirements, while non-mandatory elements may not use these terms. Regulatory citations are provided throughout the Guide, and Appendix I summarizes the applicable regulations. In all aspects of occupancy, doing the right thing is only part of the job. PHA staff must also be certain that every action is documented properly. Written third party verification forms should be present in each applicant's or resident's file or available electronically to support income, deductions and rent, preferences, tenant and criminal history.¹ Obtaining and using such documentation correctly makes sure that the public housing program benefits eligible families and that the rent they pay is correct. High quality documentation prevents both

¹ If written third party documentation is unavailable, PHA staff must provide other forms of verification and indicate, in the file, efforts to obtain third party written documentation.



inadvertent errors and program fraud. Equally important, PHA staff must also maintain applicant and resident confidentiality when handling and maintaining this documentation.

Part 1: Civil Rights

A knowledge and understanding of civil rights requirements is important for many aspects of housing authority operations, but it is particularly germane with respect to occupancy administration. Generally PHAs should become familiar with the requirements of applicable laws and regulations, and ensure that their policies and procedures comply with these requirements. PHAs should provide training and monitor staff activities to ensure that policies and procedures are followed.

PHAs must be prepared to reasonably accommodate the needs of individuals with disabilities. Written translations and/or interpreter services should also be made available to persons with limited English proficiency in order that they might be afforded equal access to all housing and housing related services. This means more than ensuring that all the PHA offices are accessible to persons with disabilities. PHAs must also provide written translation or interpreter services to persons with limited English proficiency. This may require the PHA to assist persons with limited English proficiency in the application process, including conducting the interview and completing the application.

Finally, PHAs should conduct affirmative marketing to members of the public, such as persons with disabilities, the elderly, or racial or ethnic minorities, or to those who are “least likely to apply” for housing, as demonstrated by the demographic of the current residents in the PHA’s jurisdiction. Often it is the lack of knowledge or language on how to obtain public housing that keeps racial or ethnic minorities from seeking housing.

The Civil Rights section of the Guide contains materials on:

- Applicable Non-discrimination Laws and Regulations;
- Limited English Proficiency;
- Disability-related Civil Rights Requirements; and
- Marketing and Other Obligations.

Part 2: Admissions

Housing authorities that handle admissions correctly and efficiently establish a strong foundation for high quality property management, but this is not an easy task. HUD requires that applicant’s eligibility be verified and that tenant and criminal histories be reviewed. Order of offers must follow the PHA’s



preferences² and tenant selection policies.³ It is a good business practice to ensure that the admissions process is “applicant-friendly.” Pressures to lease vacant units quickly may conflict with quality applicant processing and screening.

PHA staff must carry out the steps required for admission precisely and accurately and the entire process must be auditable.¹ Noncompliance with HUD rules can lead to admission of ineligible families, incorrect calculation of rents, or even unlawful discrimination.

Mistakes in admission can be costly to PHAs in practical terms and to residents if rent is incorrect. If families with serious lease compliance or criminal problems are admitted, their behavior is likely to consume the limited time and resources of property management staff and drive out the best residents.

Ensuring that applicants are eligible, screened and ready to move into the PHA’s vacant units as soon as they have been prepared for occupancy requires applicants “in the pipeline” with files current and all documentation in order. Then applicants may receive offers as soon as the units are ready. The number of applicants needed can be predicted by average turnover rates and new units coming on line. The Admissions Chapters offer practical guidance to help PHA Occupancy and Property Management staff with:

- Eligibility for Admission;
- Waiting List Administration;
- Qualification for Admission: Applicant Selection Criteria;
- Occupancy Guidelines;
- Processing Applications for Admission;
- Verification Standards;
- Tenant Selection and Assignment Plan;
- Leasing; and
- Screening and Eviction.

Part 3: Public Housing Income and Program Rents

Understanding what is considered annual income, and how to apply the regulatory and statutory deductions and exclusions is an important part of Public Housing administration. Annual and Adjusted Income are the basis for income-based rents. Once PHA staff masters the definitions of income, the

² In the HUD-approved Annual Plan

³ Found in the Admissions and Continued Occupancy Policy



formula for the income-based rent calculation is relatively simple. PHAs with resident-paid utilities must then reduce income-based rents by a fair utility allowance that represents the cost an energy conservative household would pay for utilities.

A choice between income-based and market-based flat rents must be offered to each resident once each year at the annual reexamination or annual update.ⁱⁱ Establishing flat rents requires that the PHA takes into account unit size, age, design condition and a variety of neighborhood conditions that affect rental values.

Applying and tracking the earned income disallowance properly is a different sort of challenge. The law provides a significant benefit to many residents moving from economic dependence to self sufficiency, but applying the disallowance correctly requires that residents understand their responsibility to report moves in and out of work and that staff keep careful track of each resident's disallowance periods. PHAs that elect to implement the optional individual savings accounts will have to comply with rules under that program while administering the disallowance for residents who elect to pay the reduced rent rather than the savings account. This part of the Guidebook covers:

- Annual Income (including treatment of Net Family Assets);
- Adjusted Income;
- Optional Income Deductions;
- Income Based Rent and Minimum Rent;
- Financial Hardship Exemptions;
- Optional Rent Formulations;
- Ceiling Rent;
- Family Self-Sufficiency;
- Flat Rent; and
- Earned Income Disallowance.

Part 4: Continued Occupancy

When an applicant becomes a resident, the occupancy function shifts to a regular but not necessarily constant operation. PHA management staff reexamines the circumstances of families paying income-based rents at least annually. The PHA's Admissions and Continued Occupancy Policy and lease spell out the PHA's policy on interim adjustments to rent when resident incomes change between reexaminations. Certain hardships require the PHA to adjust rents. If welfare recipients are sanctioned for failure to comply with economic self-sufficiency requirements or welfare fraud, rent cannot be reduced. This



section also addresses determinations that are made about transferring residents from one unit to another and file documentation requirements for residents and applicants.

Pet policies are administered sensibly so that residents who comply with the policy can enjoy their pets and residents who object to pet noise, odors or allergens are bothered as little as possible.

PHA staff has both public housing program management responsibilities and property management responsibilities. Well-managed PHAs try to achieve the smallest amount of time spent on program management consistent with full regulatory compliance, so the majority of staff time is available for property management. Such a goal requires a well trained, motivated and monitored staff. This part of the Guidebook provides assistance with:

- Transfers;
- Annual Reexaminations of Income and Family Circumstances;
- Interim Adjustments to Rent;
- Utilities;
- Additions to Household;
- Family Breakup;
- Assumption of Lease by Remaining Household Members;
- Guest Policies;
- Damage Claims;
- Community Service Requirements; and
- Pet Policies.

Part 5: The Public Housing Lease

A well-written lease is an essential tool for good property management. It makes management's expectations and responsibilities clear and it lays out a clear path for successful residency. Leases that are legalistic or overly complex create problems for both residents and PHA staff. The HUD regulations governing leases give PHAs valuable flexibility to tailor their leases to local situations and issues so long as the HUD-required provisions are included and the prohibited provisions are excluded. PHAs must also consider the requirements imposed by state and local laws. The Lease part of the Guidebook addresses:

- Required provisions mandated by QHWRA;
- Prohibited Provisions;
- Optional Provisions: the Reasonableness Test;
- Relationship to Occupancy Policies;
- Public Housing Lease Requirements;



- Process for Changing Lease or Policies;
- Posting Policies; and
- Reasonable Accommodations.

Part 6: Grievance Procedure

The Grievance Procedure gives public housing residents a tool to resolve disputes with PHAs that is quicker and less expensive than a lawsuit. This part of the Guide provides information on the regulatory requirements for PHA grievance procedures along with some practical guidance about how to make the process work better for both residents and PHAs. Material covered in this part of the Guidebook includes:

- Applicability of the Grievance Procedure;
- Process for Changing Grievance Procedure;
- Due Process Determinations by HUD;
- Informal Settlements of Grievances;
- Formal Grievance Hearings;
- Selecting the Hearing Officer or Panel;
- Escrow Deposits for Grievances involving Rent;
- Scheduling Hearings;
- Procedures Governing the Hearing; and
- Decision of the Hearing Officer or Panel.

Part 7: Domestic Violence

The pervasiveness and seriousness of domestic violence has illuminated it as an issue of national importance. Domestic violence knows no race, gender, or nationality and its impact on the lives of its victims can be devastating. In many instances, victims of domestic violence suffer not only the physical abuse, but also the devastation of being displaced from their homes. As a result, affordable housing issues become a serious consequence of domestic violence.

Material covered in this part of the Guidebook includes:

- Rationale behind Establishing a Domestic Violence Preference;
- Types of Evidence Required as Proof of Domestic Violence;
- Policies related to screening and eviction, and admissions and occupancy of victims of domestic violence; and
- Tools and Best Practices PHAs may utilize.



Appendices

Eight appendices are provided to assist PHAs with occupancy administration:

- Appendix I: Statutory and Regulatory Foundation of Occupancy Requirements
- Appendix II: Definition of Terms
- Appendix III: Sample Public Housing Authority Admissions and Continued Occupancy Policy
- Appendix IV: Sample Public Housing Lease
- Appendix V: Sample Public Housing Grievance Procedure
- Appendix VI: Sample Public Housing Community Service Procedure
- Appendix VII: Public Housing Pet Policy Outline
- Appendix VIII: Sample Verification Forms

Note

The information collection requirements contained in this Guidebook have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The following active information collections contained in this Guidebook have been approved as of April 30, 2003 under the Paperwork Reduction Act (PRA): (1) Pet Ownership in Public Housing for the Elderly or Persons with Disabilities (OMB# 2577-0078); (2) Requirements for Designating Housing Projects Plan (OMB# 2577-0192); (3) Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification Preference, Waiting List, Exemption of Police Officers (OMB# 2577- 0220); (4) Public Housing Reform; Change in Admission and Occupancy Requirements (OMB# 2577-0230); and (5) Screening and Eviction for Drug Abuse and other Criminal Activity – Final Rule (OMB# 2577-0232). Furthermore, this Guidebook supercedes all previous Public Housing Occupancy guidance.



PART 1: CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS



Chapter 1. Civil Rights and Nondiscrimination Requirements

1.0 General Provisions

Public Housing Agencies (PHAs) are subject to civil rights requirements. This chapter gives a general overview of the civil rights requirements of PHAs that specifically apply to admissions and occupancy. Each chapter in this Guidebook also contains references to civil rights requirements wherever appropriate.

Federal civil rights laws prohibit discrimination against applicants or residents based on one or more of the following classifications:

- Race;
- Color;
- National origin;
- Sex;
- Age;
- Disability;
- Religion; or
- Familial status (families with children under the age of 18).

In addition, PHAs may be subject to local and/or state laws that prohibit discrimination. Below is a brief description of the major federal laws, along with reference to their implementing regulations. Throughout this Guidebook, reference is made to applicable civil rights requirements with respect to various admissions and occupancy activities. PHAs should be familiar with the regulations implementing these civil rights laws and the HUD Notices explaining those requirements. Both the Offices of Public and Indian Housing (PIH) and Fair Housing and Equal Opportunity (FHEO) provide technical assistance on these requirements. See e.g., Notice PIH 2002-01, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968; and the Fair Housing Act of 1968.

1.1 Nondiscrimination Laws

HUD rules require recipients of Federal housing assistance to comply with civil rights related program requirements that affect nearly every aspect of PHA operations. Examples include affirmative fair housing marketing, waiting lists, selection for admission, residency preference, relocation, record keeping



and maintenance. The major civil rights laws and their implementing regulations to which public housing agencies must adhere are as follows:

Fair Housing Act - 42 U.S.C. 3601 (also known as Title VIII of the Civil Rights Act of 1968) (24 CFR Part 100 et seq)

The Fair Housing Act prohibits discrimination based upon race, color, religion, sex, national origin, disability, or familial status (families with children under the age of 18) in most housing and housing related transactions. The Act applies to all but a very small subset of housing providers, both private and public. Under the Act, PHAs or other housing providers⁴ may not, on the basis of race, color, religion, sex, national origin, disability, or familial status:

- Deny anyone the opportunity to apply to rent or purchase housing, nor deny to any qualified applicant the opportunity to lease or purchase housing suitable to his or her needs;
- Provide anyone housing that is different from that provided to others;⁵
- Subject anyone to segregation or disparate treatment;
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
- Treat anyone differently in determining eligibility or other requirements for admission, including the terms and conditions of a lease;⁶
- Deny anyone access to the same level of services;⁷
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class;

⁴ The Act applies to among others, property owners, landlords, housing managers, real estate agents, brokerage service agencies, and banks.

⁵ However, a PHA is not only permitted but is required to provide persons with disabilities with housing that is structurally appropriate for their needs. This will range from a unit that is fully accessible to one that has been specifically adapted for a particular individual. This accessible or adaptable housing, although different from that provided to others, is required because it enables persons with disabilities to participate in the public housing program.

⁶ Except that a PHA is obliged to offer reasonable accommodations to applicants with disabilities. This will not affect the PHA's screening or eligibility standards, but it might require a PHA to revise its procedures or practices in carrying out those standards.

⁷ If a PHA provides services on its property or allows others to use its facilities to provide services, then those services would have to be usable by and accessible to persons with disabilities. For example, if a PHA offered a training program for tenants, it would have to ensure that the program was fully accessible to and useable by tenants with disabilities.



- Discriminate in the provision of brokerage services or in residential real estate transactions; and
- Discriminate against someone because they are related to or associated with a member of a protected class.

In addition to the general prohibitions of the Fair Housing Act, the Act also has certain requirements that relate specifically to familial status and persons with disabilities. Some PHAs may not be aware that they may not use lead-based paint considerations as a basis for denying housing to families with children. In all housing constructed prior to 1978, regardless of the presence of children in the family, the PHA must educate the family of the conditions of the dangers of lead-based paint by giving them the EPA Lead Hazard Information Pamphlet, and the HUD lead disclosure form on the presence of known lead-based paint and lead-based paint hazards.ⁱⁱⁱ The family then has the right to make the choice whether or not to occupy the unit.

Similarly, if a family wishes to remain in a unit where lead-based paint hazards have not been controlled, it would violate the Fair Housing Act for a PHA to seek to terminate the tenancy of that family because of the presence of minor children in the household. However, the PHA may offer a transfer to a family residing in a unit where lead-based paint hazards have not been controlled to enable the family to move to a unit where lead-based paint hazards have been abated, including for the purpose of addressing hazards in the family's current unit.

Although the Fair Housing Act generally requires applicants to be given equal treatment irrespective of membership in a protected class, there are certain limited circumstances when the Act may require a housing provider to treat persons with disabilities differently to enable them to have equal access to or enjoyment of housing and other housing-related programs. For example, the Fair Housing Act directs housing providers to provide "reasonable accommodations" to persons with disabilities. This means a PHA may have to change its rules, policies, and procedures to allow persons with disabilities equal access to housing. In addition, the Fair Housing Act contains accessibility requirements that apply to the design and construction of new multifamily housing built for first occupancy after March 13, 1991 (24 CFR § 100.205).

Title VI of the Civil Rights Act of 1964 (24 CFR Part 1)

Title VI prohibits all recipients of federal financial assistance (including PHAs) from discriminating based on race, color, or national origin. Title VI applies to any program or activity receiving Federal financial assistance, not just housing. Each Federal agency has its own Title VI regulations. Thus, if PHAs receive funds from any other Federal agency, they will be subject to those agencies' Title VI rules, in addition to HUD's Title VI regulations. In housing, Title VI and the Fair Housing Act apply to many of the same types of activities.



HUD's Title VI regulations provide that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjected individuals to discrimination based on race, color, or national origin. The regulations also require, that even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin (24 CFR § 1.4(b)(6)(ii)).

Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8)

Section 504 prohibits discrimination based upon disability in all programs or activities operated by recipients of Federal financial assistance, including PHAs. Section 504 obligates recipients to make their programs accessible to persons with disabilities, including:

- Making and paying for reasonable structural modifications to units and/or common areas that are needed by applicants and tenants with disabilities;
- Operating housing that is not segregated based upon disability unless authorized by federal statute or executive order;
- Providing auxiliary aids and services necessary for communication with persons with disabilities;
- Developing a "needs assessment" of the need for accessible units for applicants and tenants, and a transition plan to achieve program accessibility; and
- Performing a self-evaluation of the PHA's program and policies to ensure that they do not discriminate based on disability.

Also, the Section 504 regulations establish affirmative accessibility requirements for newly constructed or rehabilitated housing and non-housing programs operated by PHAs including providing a minimum percentage of accessible units. In order for a unit to be considered accessible, it must meet the requirements of the Uniform Federal Accessibility Standards (UFAS)^{iv} (24 CFR §§ 8.22, 8.23, 8.24, and 8.32).

Title II of the Americans with Disabilities Act of 1990 (28 CFR Part 35)

Title II extends Section 504's prohibitions on discrimination against persons with disabilities to the programs, activities, and services operated by public entities, regardless of whether or not such programs are recipients of federal financial assistance. Public Housing Authorities qualify as "public entities." In addition, Title II contains specific physical accessibility requirements that apply to common areas and public spaces, not individual housing units (28 CFR Part 151; 28 CFR Part 35, 28 CFR Part 36, Appendix A).

**Age Discrimination Act of 1975 (24 CFR Part 146)**

This Act prohibits discrimination based upon age in federally assisted and funded programs or activities in limited circumstances. It is not a violation of the Act to use age distinctions if such distinctions are permitted by statute for particular programs or if they are a factor necessary for the normal operation of the program or the achievement of a statutory objective of the program or activity. Thus, a federally funded program that provides benefits to the elderly would not be considered to be operating in violation of the Age Discrimination Act, nor would operating elderly only housing that was designated pursuant to a HUD approved designated housing plan violate that Act.

Obligation to Affirmatively Further Fair Housing (24 CFR § 960.103 (b), and 24 CFR § 903.7(o))

The Fair Housing Act requires the Secretary to administer all programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing. This includes the public housing program. Under Section 511 of the Quality Housing and Work Responsibility Act (QHWRA) of 1998, PHAs must describe these efforts in their Public Housing Agency Plans.^v PHAs must determine whether their programs reach all eligible population groups. If they find that their programs are disproportionately serving only some groups and not others, the PHA should take actions to increase housing opportunities for under-served households. For example, under the requirement of affirmatively furthering fair housing, a PHA must engage in affirmative marketing to groups least likely to apply for the PHA's housing.^{vi}

PHAs are also subject to Executive Order 11063, which requires nondiscrimination and equal opportunity. The rules implementing this Executive Order require that PHAs maintain demographic data in connection with their programs and take "affirmative action to overcome the effects of prior discrimination" (24 CFR Part 107).

Improving Access to Services for Persons with Limited English Proficiency (LEP)

Executive Order 13166 requires Federal agencies and grantees to take affirmative steps to communicate with people who need services or information in a language other than English. The Order also requires Federal agencies to prepare a plan to improve access to federally conducted programs for people with limited English abilities, and to draft similar guidance for grantees. On June 12, 2002, the Department of Justice issued revised instructions to Federal agencies to assist in developing guidance for recipients. HUD-specific guidance is forthcoming.



Other Applicable Laws and Regulations

- Civil rights provisions in housing program statutes and rules (for example, the certifications required with the PHA's Annual Plan and all applications for funding, site and neighborhood standards, etc.);
- Section 109 – Any PHA programs that are funded through Community Development Block Grants are subject to the nondiscrimination requirements in Section 109 of the Housing and Community Development Act of 1974 (24 CFR Parts 6, 180, 570);
- Any applicable State laws or local ordinances; and
- Any other legislation protecting the individual rights of tenants, applicants or staff that may subsequently be enacted (24 CFR § 960.203).

Effect of More than One Applicable Law or Regulation

Note that when more than one civil rights law applies to a situation, the laws should be read and applied together. For example:

- Both the Fair Housing Act and Section 504 have provisions relating to modification of units that must be made to make the units accessible for persons with disabilities.^{vii} A PHA must apply Section 504's additional requirement that makes the cost of such modifications the responsibility of the PHA, unless doing so would constitute an undue financial and administrative burden or would be a fundamental alteration in the nature of the program.^{viii}
- In constructing new housing, a PHA must ensure that a minimum of 5 percent of total units are built to meet the accessibility requirements in UFAS and 24 CFR Part 8 and also must ensure that where applicable, the remaining units meet the design and construction requirements of the Fair Housing Act.^{ix} (24 CFR § 100.205). In addition, the PHA must also ensure that a minimum of 2 percent of total units are accessible for visually and hearing impaired individuals.^x

Program Reporting, Data Collection, and Record Keeping (24 CFR § 107.30, 24 CFR § 1.6(b), 24 CFR Part 8.55, 24 CFR Part 146.27 and 24 CFR Part 121)

The PHA must complete HUD Form 50058, Family Report, on every applicant at the time of initial examination, annually at the reexamination and when other administrative actions are taken.^{xi} Part of the information required on HUD Form 50058 relates to the race and ethnicity of the head of household. The choices offered by the form for race are American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, American Indian or Alaska Native and White, Asian and White, Black or African American and White, American Indian or Alaska Native and Black or African American. It should be noted that family members are permitted to identify themselves using racial categories other than those indicated above. The choices for ethnicity are Hispanic or Latino



and Not-Hispanic or Latino. If an applicant refuses to identify him or herself with one of the racial and/or ethnic categories the PHA should choose an appropriate category, based on observation, and enter it. Form 50058 also requires PHAs to report on whether a resident has a disability, but does not require the resident or the PHA to identify the nature of the disability.

Discrimination Complaints

Occasionally, an applicant or tenant may advise the PHA that he or she believes that he or she has been subject to unlawful discrimination by the PHA. The PHA should first determine whether the applicant's or tenant's assertions have any merit and take any warranted corrective action. In addition, the PHA should provide the applicant or tenant with information about how to file a complaint with HUD. The PHAs should also inform such persons who have disabilities of their right to also file a grievance with the PHA as provided by regulations implementing Section 504 at 24 CFR 8.53(b). This information should include the procedure for requesting a reasonable accommodation in order for an individual with a disability to use the PHA's grievance process or HUD complaint process.

1.2 Disability-Related Civil Rights Requirements Under Section 504 of the Rehabilitation Act and the Fair Housing Act

Section 504 requires that recipients of federal financial assistance operate their program in a manner that ensures that they are readily accessible to and useable by persons with disabilities. This requirement applies not only to ensuring that a PHA's facilities are barrier free so that persons with mobility impairments can actually use the facilities, but also means that housing providers must be prepared to effectively communicate with persons who have visual, speaking, and hearing impairments. Moreover, PHAs must modify policies, rules, and procedures in order to accommodate persons with disabilities so that such individuals can make effective use of the housing program.^{xii} PHAs are not required to make such changes if change would constitute a fundamental alteration of the program or pose a substantial administrative and financial burden.

Who is a Person with a Disability under Federal Civil Rights Laws

The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations, define an individual or person with a disability in virtually the same language. Section 504's definition of disability (handicap) is found at 24 CFR § 8.3, the Fair Housing Act definition is at 24 CFR § 100.201, and the ADA definition is found at 28 CFR § 35.104. A person with a disability is any person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;



- Has a record of such an impairment; or
- Is regarded as having such impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users; and
- Persons who objectively pose direct threat to health or safety.

As used in this definition the phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; muscular-skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” mean functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

“Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a recipient as constituting such a limitation; has none of the impairments defined in this section but is treated by a recipient as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The above definition of disability determines whether an applicant or resident is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under Section 504 and the Fair Housing Act. This definition of disability relevant to reasonable accommodation is not the operative definition of disability for determining eligibility for Public Housing Programs that serve persons with disabilities such



as mixed population housing, vouchers targeted for persons with disabilities, and eligibility for preferences or medical deductions related to having a disability.

Exclusion of Individuals Who Pose a Direct Threat to Health or Safety of Others.

Federal disability discrimination laws do not cover persons whose tenancy would pose a direct threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others. However, neither Section 504 nor the Fair Housing Act allows for exclusion of individuals based upon fear or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, a recent history of overt acts).^{xiii} A housing provider's good faith belief or speculation that an individual poses a direct threat is not sufficient. The assessment should consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable modifications of rules, policies, practices, procedures, or services that will reduce or eliminate the risk of a direct threat. Consequently, in evaluating a recent history of overt acts, a provider should take into account whether the individual has received intervening treatment or medication that has reduced or eliminated the risk of a direct threat. In such a situation, the provider may request that the individual document how the circumstances have changed so that he/she no longer poses a direct threat. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him or her from the housing on that basis.^{xiv}

Accessibility in Communication

A PHA should ask all applicants if they require any type of accommodations in the application or admission process. A PHA should also ensure that its application and admissions process is accessible and understandable by applicants with disabilities. Documents should be made accessible in Braille format or in large type for vision impaired applicants. Sign language interpreters should be provided for hearing impaired applicants. If an applicant is not able to read, intake staff should read and explain orally anything that they would normally hand to an applicant to be read or filled out.

Reasonable Accommodations

Federal disability civil rights laws make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with



disabilities than they have on individuals without disabilities, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. An accommodation may also be a structural change to a common area or a dwelling that is needed by a person with a disability.

To show that a requested accommodation may be necessary, there should be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. An accommodation will not be considered reasonable if it constitutes a fundamental alteration of the provider's program, or constitutes an undue financial and administrative burden.

Reasonable Accommodations in the Admissions/Occupancy Process

Some applicants with disabilities may need accommodations to enable them to participate in the application and leasing process.

Note: Even though a PHA has a wheelchair accessible rental office, an applicant's disability may prevent him from actually entering the office. In that instance, it may be a reasonable accommodation for the PHA to send staff to a location the applicant can use, including the applicant's home.

A PHA has a policy of requiring tenants to come to the rental office in person to pay their rent. A prospective tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests permission to have a friend mail her rent payment to the rental office as a reasonable accommodation. The PHA must make an exception to its payment policy to accommodate this tenant.^{xv}

Other persons with disabilities may need reasonable accommodations in order to actually occupy and enjoy their public housing unit.

Note: A PHA provider has a policy of providing unassigned parking spaces to tenants. A tenant with a mobility impairment, who is substantially limited in her ability to walk, requests that she be provided with an accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit, but those spaces are available to all tenants on a first come, first served basis. The PHA must make an exception to its policy of not providing assigned parking spaces to accommodate this tenant.^{xvi}

Note: A tenant with severe arthritis needs grab bars added to his bathroom to make it possible for him to use the bathroom safely, due to his disability. The PHA must install and pay for the needed



grab bars changes unless doing so is financially and administratively A tenant with a seizure disorder needs to have a large seizure alert dog as an assistance animal as a reasonable accommodation to his disability. The PHA may not refuse to allow the assistance animal, even though the PHA generally has a policy that limits the size of pets to small dogs.

Note: A tenant with a seizure disorder needs to have a large seizure alert dog as an assistance animal as a reasonable accommodation to his disability. The PHA may not refuse to allow the assistance animal, even though the PHA generally has a policy that limits the size of pets to small dogs.

Civil Rights Requirements Related to Verification/Inquiries About Disability (24 CFR § 100.202)

Under the Fair Housing Act, it is unlawful for a housing provider to:

- (1) Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or
- (2) Ask about the nature or severity of a disability of such persons. Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability:

- An inquiry into an applicant's ability to meet the requirements of tenancy; An inquiry to determine if an applicant is a current illegal drug abuser;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. A PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means that a PHA may ask applicants if they need units with accessible features.

Housing authorities are required to verify that an applicant qualifies as a person with a disability before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal the fact that they have a disability; however, if they do not, they may not necessarily receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities. A sample form is included in Appendix VIII.



Note: The PHA should explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue.

To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security or SSI disability income. Receipt of such income is all the verification needed that an individual qualifies as a person with a disability. On the other hand, some applicants will be persons with disabilities even though they do not have such income. A sample form is included in Appendix VIII that the PHA can use to document that an applicant or resident meets the HUD eligibility definition of a person with a disability. The form should be sent to a qualified professional having knowledge of the person's disability (not necessarily a physician) who can verify the applicant's status.

PHAs may also need to verify whether the requested accommodation is necessary to provide the individual with equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, PHAs should only ask for information that is actually necessary to verify this information. PHAs are still not permitted to inquire about the nature or extent of the person's disability, nor is it necessary or permitted for PHA staff to ask about anyone's diagnosis or details of treatment. If a verification source sends such information it should not be placed in the file; it should be disposed of in a secure manner, such as by shredding. Under no circumstances should a PHA request an applicant or resident's medical records nor should PHAs require that applicants or residents submit to physical examinations or medical tests such as TB testing, or AIDS testing as a condition of occupancy.

Note: It is a violation of Section 504 and the Fair Housing Act for a public housing authority to inquire whether an applicant or tenant is capable of "living independently." Courts have consistently held that this is not a legitimate inquiry to make of applicants or tenants in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

1.3 Affirmative Marketing and Other Affirmative Obligations

The Federal Housing Administration (FHA) maintains affirmative fair housing marketing rules for HUD's multifamily housing programs. Although they apply only to FHA programs, the regulations provide the definition of what it means to affirmatively further fair housing:

It is the policy of HUD to administer its FHA programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing marketing areas have a like range of housing choice available to them regardless of their race, color, religion, sex, handicap, familial status or



national origin (24 CFR 200.610). The affirmative fair housing marketing rules require owners to develop fair housing marketing plans that attract applicants of all racial and ethnic groups (24 CFR Parts 200.620 and 200.635).

As part of the Annual Plan (24 CFR Part 903.2(d)(2)), the PHA should take affirmative action to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin or other prohibited bases. Such affirmative action may include but is not limited to appropriate affirmative marketing efforts. The following are examples of affirmative marketing efforts:

- Marketing materials should support an affirmative advertising and marketing program that is consistent with the Fair Housing Act guidance on wording, logo, size of type, etc., and Section 504 (24 CFR 8.54).
- Using the Equal Housing Opportunity slogan: “Equal Housing Opportunity in accordance to regulations.” Also, HUD requires PHAs to display the Fair Housing Poster at public housing developments, in any rental office, and other locations (24 CFR 110).
- Advertising in print and electronic media that are used, viewed or listed by those identified as the population that is less likely to apply.
- Developing brochures or other information material that describes the housing units, application process, waiting list, screening criteria, and preference structure accurately.
- Marketing should use clear and easy to understand terms and if appropriate provide translation of written materials or interpretations to facilitate education and outreach to the limited English proficiency population (Executive Order 13166).
- It is the responsibility of the PHA to have a written policy in its Admissions and Continued Occupancy Policy (ACOP) (and thus its Annual Plan) that explains how one would request a reasonable accommodation, how it will be processed, and one’s options if the request is denied, including use of the grievance procedure.

Note: It is the duty of the PHAs to conduct an analysis of impediments to fair housing choice.

PART 2: ADMISSIONS TO PUBLIC HOUSING



Chapter 2. Eligibility for Admission

2.0 Overview

Determining eligibility of an applicant for public housing is one of the first steps in the admission process. Although the term “eligible” is often used to mean “qualified for admission”, it has a narrower, more technical meaning that does not embrace every aspect of qualification. An applicant family will be “eligible” if they:

- Have an annual income at or below a PHA’s income limit; and
- Meet one of the PHA’s definitions of “family”; and
- Have at least one family member who is either a U.S. citizen or an eligible immigrant;⁸ and
- Provide Social Security numbers for every family member age 6 or older or certify that they do not have Social Security numbers.

In addition to these criteria, which are described in detail below, an applicant must pass the PHA’s screening (covered in Chapter 4, Qualification for Admission: Applicant Selection Criteria) before being qualified to receive a unit offer.^{xvii}

2.1 Annual Income (24 CFR § 5.609)

Annual income is used both to determine income eligibility and as the first step in income-based rent calculation. This section of the guidebook discusses income eligibility, the components of Annual Income, types of income that are excluded for both eligibility and rent, and how assets and asset income are handled.

Income for Eligibility

To be eligible for public housing, an applicant must have an annual income that is no more than the “Lower Income” limit for the jurisdiction.^{xviii} The Lower Income limit is set at 80 percent of area median income, adjusted for smaller and larger families. HUD publishes the income limits in the Federal Register and on the Internet at www.huduser.org. PHAs may also establish income limits for continued occupancy if they are required to do so by local law and there is decent, safe and sanitary housing of the right size for a family at a rent not exceeding the family’s public housing rent. Also see the discussion about income targeting and deconcentration in Chapter 6.

⁸ The family must also be willing and able to pay a higher rent for each member who is not a citizen or eligible immigrant.



Definition of Annual Income

Annual income includes all amounts, monetary and nonmonetary, that go to, or on behalf of the family head or spouse (even if temporarily absent) or to any other family member or are anticipated to be received from a source outside the family in the 12 months following admission or the annual reexamination's effective date, including amounts derived from assets to which any member of the family has access that are not specifically excluded by Federal regulations.

Categories of included and excluded annual income are discussed in Chapter 10, Income and Program Rents. PHA Occupancy staff needs to master what is and is not considered income in the public housing program, and to review types of excluded income at least annually.

Most errors in determining income will also produce errors in rent calculations. Appendix VIII provides, in a checklist format, a list of the various components of Annual Income that may be used in an admission or reexamination interview. Using such a checklist ensures that each family will be asked about all the types of potential income they might have as well as excluded income. The family head's signature on the checklist documents that the family has been asked.

2.2 Eligible Family Status (24 CFR § 5.403)

Definitions of Eligible Families

The Federal rules define certain types of families, but the PHA establishes the basic definition of what is considered to be a family. A typical, but not required, definition of a family is:

- All of the federally defined families, including elderly family, near-elderly family, disabled family, displaced family, remaining member of a tenant family, and a single person and two or more persons related by blood, marriage, adoption or other operation of law, or two or more persons who are not so related but who will live together in a stable relationship and share resources.⁹
- One reason that many PHAs employ such a broad definition of family is to permit the admission of, for example, two unrelated young mothers who want to share housing because they work differing shifts and can save money on child care costs by sharing an apartment.
- Some PHAs explicitly include emancipated minors in the definition of family. While many PHAs have, in the past, insisted that a couple living together as husband and wife document their legal marriage, several PHAs have been successfully sued over this requirement, so few PHAs insist on such

⁹ PHAs may not alter the definitions that are included in HUD's regulations, for example by lowering the age for an Elderly Family, or excluding children from an Elderly Family.



documentation today. In any event, if a couple has children together, each parent is related by blood to the children but the parents do not because of the children become related to each other.

An elderly family is a family whose head, spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together or one or more persons who are at least 62 years of age living with one or more live-in aides. There is nothing in the definition of elderly family that excludes children. Many elderly families today consist of grandparents with custody of grandchildren. This is an elderly family.

A near-elderly family is a family whose head, spouse or sole member is at least 50 years of age but below the age of 62; or two or more persons who are at least 50 years of age but below the age of 62 living together or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides. Near elderly families are only eligible for admission to projects designated for the elderly if the PHA determines there are an insufficient number of elderly families designated elderly properties if the PHA's plan for designation so provides.

A disabled family is a family whose head, spouse or sole member is a person with disabilities. It may include two or more persons who are persons with disabilities living together or one or more persons with disabilities living with one or more live-in aides. The definition below covers public housing eligibility for programs serving persons with disabilities such as mixed population housing, designated housing for persons with disabilities, vouchers targeted for persons with disabilities, and eligibility for the \$400 deduction for disabled families and for medical deductions or disability assistance deductions for persons with disabilities. Families that do not qualify as disabled families may still be eligible for public housing programs and preferences that are not linked to disability status.

A person with disabilities is a person who is disabled as defined in 42 U.S.C. 423 (the Social Security definition); is determined to have a physical, mental or emotional impairment that is expected to be of long-continued and indefinite duration; is substantially impeded in his or her ability to live independently; is of such nature that the ability to live independently could be improved by more suitable housing conditions; or has a developmental disability as defined in 42 U.S.C. 6001. Persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome are not excluded. For purposes of qualifying for public housing programs, where eligibility is linked to disability status, a person whose disability is based solely on any drug or alcohol dependence¹⁰ is excluded.

¹⁰ Although some persons with drug or alcohol dependence may have other disabilities.



A **displaced family** is a family in which each member or whose sole member is a person displaced by governmental action or a declared natural disaster. This definition does not include all the families who would formerly have qualified for the involuntary displacement federal preference.

Note: The former federally mandated admission priority for elderly, near elderly, disabled and displaced families over single persons was eliminated by the Quality Housing and Work Responsibility Act, but many PHAs have elected to retain it as a local preference.

The **remaining member of a tenant family** is a member who was listed on the lease of a public housing unit and is the only family member still remaining in the unit. A child may remain in the unit as a remaining family member if the PHA permits an adult to join the household as a new head of household.

A **single person** is a person who is not elderly, near elderly, disabled, displaced or the remaining member of a tenant family.

With such a broad definition of Eligible Family one might wonder why verification of family status would be necessary. There are several reasons. Elderly and disabled families qualify for two deductions from income that are not available to other family types:

- The \$400 elderly/disabled family deduction; and
- Unreimbursed medical expenses that exceed three (3) percent of Annual Income.

The deduction for disability expense allowance also requires that at least one family member be a person with a disability. The person with a disability does not need to be the head or spouse (as required for the two deductions above), but the expense for care or apparatus must permit a family member to be employed.^{xix}

In addition, for PHAs that grant a local preference for admission to mixed population buildings to elderly, disabled or (sometimes) displaced persons over single persons, verification of status is needed before the preference can be granted. Finally, verification that all the children in the family are related to the head of household is needed to ensure that the family is not claiming children who will not actually reside in the unit in order to qualify for a larger size unit. Such verification can document the relationship: blood (birth certificate), adoption (legal adoption records), court awarded custody (court documents), or if the PHA opts to permit it, kinship care (child's medical records or school records establishing place of residence). Foster children or adults (state placement agency) can also be permitted to live in a PHA unit with the PHA's permission. **However, a PHA refusal to allow a tenant to have a foster child or foster children may constitute a violation of the familial status provisions of the Fair Housing Act.**



Finally, documenting a stable relationship and shared resources between otherwise unrelated individuals usually involves documenting a living arrangement that is already in place.

Certain persons who are not members of a “family” may still reside in a public housing unit (and be considered in establishing maximum unit size), but only with the PHA’s permission. Foster children and foster adults are one example of non-family members who may still be household members. In addition, as mentioned in the definitions of Elderly Family and Disabled Family, Live-in Aides can be household members.

A Live-in Aide is a person who resides with one or more elderly persons or near-elderly persons, or persons with disabilities who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Citizenship and Eligible Immigrant Status (24 CFR § 5.506)

To receive housing assistance all family members must either be citizens or nationals of the United States or eligible immigrants.^{xx} Persons who are U.S. citizens or nationals may certify to their status (and parents may certify to the status of their children). Persons who are not U.S. citizens or nationals have two choices.

Immigrants may either claim or document their eligibility for housing assistance, or they may choose not to contend their status and relinquish housing assistance. Relinquishing housing assistance does not necessarily mean that the undocumented family member cannot reside with the assisted family or should leave the assisted housing.

Those who qualify as eligible immigrants are treated differently based upon their age. Immigrants who are 62 years of age or older can sign a declaration of eligible immigrant status and provide proof of age. Immigrants who are younger must sign a declaration of eligible immigrant status, and provide the PHA one of the documents accepted by the Immigration and Naturalization Service (INS), and a signed verification consent form.^{xxi} See Section 7.3 concerning acceptable evidence of eligible immigrant status. Immigrants may choose not to contend that they have eligible immigrant status and still be housed in or remain in the assisted housing. So long as at least one family member is either a citizen or an eligible immigrant, the family will qualify as a “mixed family” under 24 CFR § 5.504 and will have their housing assistance pro-rated (which means they will pay a higher rent than they would if all family members were either citizens or eligible immigrants).



The INS determines what documents eligible immigrant status and the PHA may rely upon such verifications as INS accepts. The PHA then uses the identification from the documentation provided by the family to check with the INS's automated Systematic Alien Verification for Entitlements (SAVE) system and confirm eligible immigrant status. If the SAVE system does not verify eligible immigrant status, the INS will perform a manual search of records. See Chapter 7 on Verification Standards for additional guidance.

Disclosure of Social Security Numbers (24 CFR § 5.216)

Applicants for public housing are required to document the Social Security numbers of all family members at least six years of age, or certify that an individual does not have a Social Security number. Refusal to provide a Social Security number or a certification, renders an applicant ineligible for public housing. However, if a child is under six years of age, there is no authorization to request a Social Security number.

Two cases of applicants who might not have Social Security numbers include a very young child on whose behalf no assistance has been sought or granted, and an immigrant who has worked in and retired from a foreign country. In these cases refusal to provide a Social Security number (that has not been issued) is not grounds for rejecting the application.

Ineligibility Because of Criminal Activity (24 CFR § 960.204)

PHAs **are required** to prohibit admission of families with members:

- Who were evicted from federally assisted housing for drug related criminal activity for three years following the date of eviction (unless the family can demonstrate that the person who engaged in the drug related activity has been rehabilitated or is no longer a member of the household); or
- Who are currently engaging in illegal use of a drug; or
- Who have shown a pattern of use of illegal drugs that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents; or
- Who are subject to a lifetime registration requirement under a State sex offender registration program; or
- Whose abuse of alcohol or pattern of abuse of alcohol would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents; or
- Who have ever been convicted of drug-related criminal activity for manufacture of methamphetamine on the premises of federally assisted housing.

Other issues related to criminal activity and drug-related criminal activity that are discussed in Chapter 4.



Chapter 3. Waiting List Administration

3.0 Overview

The waiting list is the mechanism used to implement a PHA's preference system and, thus, establishes the order in which housing offers are made to qualified applicants. Setting up and maintaining the waiting list properly is essential to carrying out public housing admissions in accordance with HUD's civil rights and program regulations and the PHA's policies.

Although "the waiting list" is referenced, there are really multiple sub-lists based on unit sizes and types. Unit sizes are usually expressed as numbers of bedrooms, although some units¹¹ can comfortably house larger families because they have greater square footage than typical public housing development units with the same number of bedrooms. Unit types include units designed for larger families (including elderly or disabled families with children), small units built to house one or two persons (including elderly persons and persons with disabilities), units that meet the Uniform Federal Accessibility Standards (UFAS) because they are accessible for persons with mobility impairments, and units adapted to meet the needs of persons with vision or hearing impairments.

A well-organized waiting list is a source of data about need and demand for units by size, type and location. By analyzing trends of acceptance and refusal of unit offers, a PHA can tell which developments are considered most and least desirable by families with different characteristics. This can be useful in planning improvements in property management and maintenance. Waiting list data is also essential for almost all HUD applications such as demolition/disposition, voluntary conversion, HOPE VI, and Designated Housing.

To assure that PHAs are in compliance with statutory requirements, and prevent violations that could affect applicants of assisted housing, waiting list audits are a primary tool when HUD conducts Occupancy or Civil Rights Monitoring reviews.

This chapter discusses how to set up and manage the waiting list in accordance with the PHA's Admission and Continued Occupancy Policy (ACOP), and the regulations at 24 CFR §§ 5.400, 5.600, 960.201 through 960.208. This chapter will provide guidance for PHAs on how to:

- Enter new applications on the waiting list;
- Opening and Closing the waiting list or a sub-list;

¹¹ These are often scattered site units.



- Determine essential application information for waiting list placement;
- Operate community-wide and site-based waiting lists;
- Administer preferences;
- Update the waiting list;
- Remove applications from the waiting list; and
- Process applications for designated housing.

3.1 Entering New Applications on the Waiting List

PHAs may accept applications only for waiting lists or sub-lists that are open. Many PHAs maintain an electronic log that lists applicants by the date and time their application was received. In fact, some PHAs use electronic kiosks in their occupancy offices where applicants can file electronic applications. PHAs that do not have electronic waiting lists can still be fully compliant with all of HUD's requirements using manual systems. PHAs could also accept e-mail applications.

Since applications need not be made in person, but can be accepted by mail, electronically, or by telephone, a random sorting system or lottery may be used to establish application numbers for applications received at the same date and time. If a "lottery or random system" is used for accepting applications for waiting lists, reasonable accommodations must be provided for persons with disabilities. Whether the PHA sorts in-person applications by date and time, a lottery, or a randomly generated application number, the result will be a master list of applicants with a specific identifier that will be used to sort the sub-lists among applicants with the same preferences. PHAs without local or ranking preferences would admit applicants in date/time or lottery/random application number order, as applicable.

The waiting list is typically divided into sub-lists by unit type and size.¹² Most PHAs have separate sub-lists for family/general occupancy developments and elderly/disabled (mixed population) properties, which are further divided by unit size. PHAs with HUD-approved designated properties usually maintain sub-lists for those properties separate from the sub-lists for their elderly/disabled (mixed population) developments. Finally, it is a good idea to list UFAS¹³ accessible and adaptable units on a separate sub-list, independent of location, since no one except those who need the accessibility features of the units should receive an offer at such a property until all current residents and all applicants with disabilities have been offered the units.

¹² Unit size is characterized by maximum occupancy.

¹³ Units accessible or adaptable under the Uniform Federal Accessibility Standards



3.2 Opening and Closing the Waiting List or Sub-List

When any of a PHA's sub-lists has so many applicants that the average length of time an applicant would have to wait for a unit offer is a year or more, the PHA may wish to close the sub-list. Taking applications absorbs a significant amount of staff time, which could be better used if the prospect of housing new applicants is distant.

A PHA, at its discretion, may restrict application intake, suspend application intake, and close waiting lists in whole or in part. For any unit size or type, if the PHA's highest waiting list preference category has sufficient applications to fill anticipated vacancies for the coming 12 months, the PHA may close the waiting list completely; close the list during certain times of the year; or restrict intake by preference, type of project, or by size and type of dwelling unit (24 CFR § 960.206).

The PHA must publicly announce the decision to close the waiting lists, restrict intake, or open the waiting lists.^{xxii} A good procedure for a PHA to open a waiting list would be to publicize in local newspapers, inform local agencies and nonprofit entities that service the same population, provide examples of accepting names, and conduct a lottery to establish a waiting list. If a PHA closes a waiting list, it may maintain a list of individuals who wish to be notified when the waiting list is re-opened, although most PHAs choose not to maintain such a list.

Some PHAs adopt a Procedure for Opening and Closing the waiting list to determine whether and when the waiting list(s) may be closed. Unless the waiting list is closed, a PHA must accept an application, even if it believes that the applicant is probably not eligible.^{xxiii}

3.3 Essential Application Information for Waiting List Placement

The application or pre-application upon which the waiting list is sorted would usually include the following information about the applicant:

- Name and social security number of head of household;
- Date and time of application or application number;
- Household Type (family, elderly, family with person with disability);
- Unit size required (number of family members);
- Amount and source of annual income;
- Admission preference, if any;
- Accessibility requirement, if any; and
- Race and ethnicity of the family head.



3.4 Community-Wide and Site-Based Waiting Lists

PHAs may adopt a Single Community Wide waiting list or, if the PHA qualifies and elects to do so in its Annual Plan, a Site-based waiting list or lists. Most PHAs use a community-wide list with one master waiting list, divided into sub-lists by the type and size of unit. Applicants are not asked their preference of location, although they may refuse an offer for “good cause” (discussed in further detail in Chapter 8, Tenant Selection and Assignment Plan, TSAP), which includes various locational elements.

A site-based list is a separate list for a specific site or sites. Although it may be centrally administered, a system of site-based lists allows applicants to select the developments where they will accept unit offers.

If a PHA opts to manage a Community-Wide waiting list, it should keep applications in sequence based upon:

- Type and size of unit needed and selected by the family (e.g. general occupancy building, accessible or non-accessible unit);
- Applicant admission preferences, if any;
- Income category¹⁴ of each applicant family; and
- Date and time the application was received or application number.

Site-based Waiting Lists must be consistent with all applicable civil rights and fair housing laws and regulations. If a PHA wishes to operate a Site-based Waiting List(s), it must obtain approval from HUD as part of the PHA’s Annual Plan approval process.^{xxiv} If a PHA decides to establish a site-based waiting list after the submission of its PHA Plan, it would be required to determine if the amendment qualifies as a significant amendment to the PHA Plan. In order for a PHA to be approved to use one or more site-based waiting lists there are a series of requirements: (24 CFR § 903.7 (b)(2))

- The PHA must have an acceptable reporting rate as determined by for the Public and Indian Housing Center (PIC) Form 50058, formerly called the Multifamily Tenant Characteristics System (MTCS);^{xxv}
- Site-based waiting lists would not violate any court order or settlement agreement or be inconsistent with a pending civil rights complaint;
- The PHA must maintain accurate records about each site and provide all applicants with complete information about all sites, including their location, number, size and type of units, amenities such as child care, security, transportation and special programs available at and near each site, as well as the average length of wait to receive a unit offer;^{xxvi}

¹⁴ This is needed to comply with Income Targeting requirements discussed in Chapter 6.



- The PHA must manage its site-based waiting list in a manner that is consistent with the PHA's activities to affirmatively further fair housing, such as marketing to groups least likely to apply for public housing;^{xxvii}
 - The PHA must have a system for regular review of the results of its site-based waiting list operation to examine any changes in the racial and ethnic makeup of each site through steps described below.^{xxviii}
 - Each year, as part of its Annual Plan preparation, the PHA must assess any changes in the racial and ethnic make-up of sites with site-based waiting lists, based on data that has been determined to be accurate by the PHA's Independent Public Accountant;^{xxix}
 - At least every three years the PHA must use independent testers or some other method approved by HUD to ensure that applicants are not treated differently based upon their race or ethnicity, and that no patterns or practices of discrimination exist;^{xxx} and
 - The PHA must make changes in its site-based waiting list system, as needed, based on the data and methods above to affirmatively further fair housing.^{xxxi}

3.5 Moving From Community-Wide to Site-Based Waiting List

Once a PHA receives HUD approval, the first step in converting from community-wide to site-based waiting lists is to obtain the site preferences of current applicants. The process is usually combined with a waiting list update (described below in Section 3.8). All current applicants should be given information about each site and an opportunity to select some number of developments where they would accept a unit offer, or to opt for the "first available" unit offer. Then, new applicants would have the same opportunity to select developments or the "first available" unit offer. Once the initial Site-based lists have been established, all applicants would be informed of the length of each list and have an opportunity when their application is updated to change their site selection. (See 24 CFR § 903.7(b)(2))

Note: PHAs should refer to their Annual Plan process and their obligations to further fair housing, for guidance in the development of a site-based list process.

3.6 Preferences

Preferences do not guarantee admission. Rather, they establish the order of placement on the waiting list. Two types of preferences may be adopted: local preferences and ranking preferences. The local preferences a PHA uses are its primary preferences and must be related to the Statement of Housing Needs in its Annual Plan (See 24 CFR § 903.7(a)).^{xxxii} New or revised local preferences require a change by Board resolution to the Admissions and Continued Occupancy Policy (ACOP) and are adopted as part of the Annual PHA Plan process or the PHA Plan Significant Amendment process. The preferences



adopted must be consistent with all laws relating to Civil Rights (described in Chapter 1).^{xxxiii} PHAs must inform applicants of duly adopted preferences so applicants may demonstrate their qualification.^{xxxiv}

Preferences are granted to applicants who are otherwise qualified and who, at the time of the unit offer (prior to execution of a lease), meet the definitions of the preferences as described in the PHA's ACOP. Preferences are verified the same way as income, assets and deductions.

In designing its preference policy, a PHA is well advised to consider the ability of its staff and software to carry out the preference system correctly. Systems that are very complicated, that have complex hierarchies or aggregate sub-preferences are subject to error and difficult to monitor and audit.

Considerations Before Applying Preferences

Although the waiting list is usually discussed as a list of families who need units, the reality is instead, the matching of those families with PHA's vacant units that need residents. Before applying its preference system, a PHA first matches the characteristics of the available unit to the applicants available on the waiting list. Factors such as unit size, accessibility features, or type of project, limit the admission to those households whose characteristics "match" the characteristics, unit type and features of the vacant unit available.

By matching unit and family characteristics, it is possible that families lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application, or ahead of families with higher preferences (e.g., the next unit available is an accessible unit and the only applicant family needing such features has no preference).

A second matter PHAs must consider is income targeting, deconcentration and income mixing.^{xxxv} If a PHA does not opt to adopt preferences that will achieve these Congressionally mandated goals, the PHA must still ensure that at least 40 percent of annual admissions are extremely low-income families and that families with appropriate incomes are assigned to sites that need deconcentration.^{xxxvi}

Local and Ranking Preferences

Multiple local preferences can be adopted. If some rank higher than others, the ACOP and PHA Plan should spell out the hierarchy and whether they will be aggregated.¹⁵ Ranking preferences establish a hierarchy of applicants within the local preference categories. If a PHA opts to adopt local preferences

¹⁵ This means that an applicant with multiple preferences would be placed higher than one with fewer preferences.



based on income tiers,¹⁶ ranking preferences can ensure that the families the PHA wishes to target receive the first assistance within each income tier. Finally, among applicants with the same local and ranking preferences, application date and time or application number, whichever applies, sorts applications. Some examples of preferences include:

- Income Targeting Preference

This preference (often used as a local preference) groups applicants based on ranges of income and follows the targeting requirement of admitting in a year not less than 40 percent of families with extremely low-income: (24 CFR § 960.202)

- Tier I: Families with incomes between 0 percent and 30 percent of area median income (this group must constitute at least 40 percent of all admissions in any year)
- Tier II: Families with incomes between 31 percent and 80 percent of area median income (the maximum percentage of annual admissions for this group is 60 percent)

- Residency Preference

A PHA is permitted to adopt a local or ranking residency preference if all non-discrimination and equal opportunity requirements in 24 CFR § 100.50 are followed; however, making residency a requirement for admission is prohibited.

A residency preference is granted to applicants who live in the specified geographical area such as the county or municipality where the PHA is located. An area smaller than the PHA's jurisdiction cannot be considered for a residency preference.

Applicants who live, work, or will be working in the area, must be considered residents of the area for the purpose of awarding the residency preference. A PHA may also consider applicants in an educational or job training program in the designated area as residents.

Finally, a PHA may not establish a minimum term of occupancy for residency. A family that arrived in town yesterday qualifies as a resident if they do not live somewhere else.

- Preference for elderly, displaced, or disabled single person

A preference for single persons who are 62 or older, displaced by government action, or persons with disabilities over other single persons for one bedroom or efficiency units may be used. Prior to the passage of QHWRA, this preference was a requirement.

- Preference for Persons with Disability

¹⁶ To ensure that income targeting requirements are met.



Some PHAs may wish to establish a preference for persons with disabilities for certain units, either at mixed population buildings or family complexes. This, of course, is in addition to the requirement that UFAS accessible or adaptable units be leased to persons who need the features of these units where there are current residents or persons on the waiting list who need such units. If a PHA is considering adopting a preference for persons with disabilities, it must make the preference available to all persons with disabilities, and not target the preference to persons with specific types of disabilities. If a percentage of units in a development are subject to a preference for persons with disabilities, PHAs must ensure that the preference does not lead to segregation of persons with disabilities in one section of the development.

- Preference for Victims of Domestic Violence

HUD specifically suggests that PHAs consider establishing a preference for victims of domestic violence. While this is not a requirement, many PHAs have agreed that victims of domestic violence deserve and need preferential treatment in admissions. Some PHAs have opted to aggregate this preference into a broader preference for families who have been displaced by natural disaster, governmental action or domestic violence.

- Former Federal Preferences

In some localities the population with the greatest unmet need is one or more of the categories of families covered by the former federal preferences. PHAs are permitted to use some or all of these preferences as Local or Ranking Preferences. They include the following:

Substandard Housing: Living in substandard housing, including homeless families;

Involuntary Displacement: Forced to leave their current housing through no fault of their own; and

Excessive Cost Burden: Paying more than 50 percent of monthly-adjusted income for shelter.

This list of local preferences is not all-inclusive. The PHA should be guided by the housing needs of families in its jurisdiction and its plan to achieve income targeting and deconcentration goals.

- Displacement Preference

The displacement preference may be defined to include applicants who can document that they have been displaced by a natural disaster declared by the President of the United States, or displaced, or through no fault of their own by governmental action. If appropriate, the preference can also be expanded to include applicants being displaced by private actions.

- Employment

This preference targets families that have at least one adult member who is employed. The PHA defines the number of hours that qualifies as employment (usually not fewer than 20 hours per week).



A PHA that adopts this preference must also grant it to families whose adult members cannot work because of age or disability.

- Upward Mobility

Upward Mobility may be defined to include all applicants with adult members who can document that they are employed or involved in job training, including job training undertaken as a requirement of persons receiving Temporary Assistance to Needy Families (TANF). Additionally, persons who cannot work because of age or disability qualify for this ranking preference.

Although the Upward Mobility preference has several subcategories, for simplicity of operation, the subcategories should not be combined or aggregated in any way. Applicants should be considered for admission based on any one of the subcategories in which they qualify. Thus, an applicant whose family includes two members with Upward Mobility preferences does not rank any higher than a family that has only one member qualifying for the Upward Mobility preference.

Change in Preference Status While on the Waiting List

Families on the waiting list who did not qualify for any preference when they applied may experience a change in circumstances that later qualifies them for a preference. The reverse may also occur. In such instances, the family should contact the PHA so that their status may be recertified or reverified. If preference status changes, applicants retain their original date and time of application or application number.

If the PHA determines that the family does now qualify for a preference, they would be moved up the waiting list in accordance with their preference(s) and their date and time of application/application number, and would be informed in writing of how the change in status has affected their position on the waiting list.

Note: Applicants must be informed of the right to provide the PHA with information that may change their preference status.^{xxxvii}

Meeting for Applicants Denied a Preference (24 CFR § 5.410(g))

If an applicant claims but does not qualify for a preference, the applicant must be given an opportunity to show that they qualify for available preferences:



- The PHA should provide a written notice if an applicant does not qualify for a preference. This notice should contain: a brief statement of the reasons for the determination, and a statement that the applicant has the right to meet with the PHA's designee to review the determination.
- If the applicant requests the meeting, the PHA shall designate someone to conduct the meeting who is not the person who made the initial determination or reviewed the determination, a subordinate, or any other person designated by the PHA. A written summary of this meeting would be retained in the applicant's file.
- An applicant may exercise other rights if he or she believes discrimination, based on race, color, national origin, sex, religion, age, disability, or familial status contributed to the PHA's decision to deny the preference.

3.7 Updating a Waiting List

Well-managed PHAs update waiting lists at least annually. Using an updated waiting list makes it easier for the Occupancy staff to contact applicants, and productivity typically increases. A suggested method for updating the waiting list is described below.

Preparing the Update Package

The first step in updating the waiting list is to send each applicant an Update Package containing both a letter explaining the process and a form the applicant may either fill out and mail back¹⁷ or bring in (if the applicant needs assistance in completing the form). Applicants with disabilities who have requested an alternative form of communication would be contacted using the requested method.

Disseminating the Update Package

The update package would be mailed to each applicant in a format that accommodates individual applicant's need. In addition, to reach hard to contact applicants, the update package can be sent to advocacy organizations including but not limited to Social Security/SSI, Public Assistance, Bureau of Employment/Unemployment, agencies serving people with disabilities such as (Alliance for the Mentally Ill, Lighthouse for the Blind, Community Health Law Project, Easter Seal Society, Independent Living, PACT programs, the ARC, etc.), and agencies that serve the homeless and persons with limited English proficiency, organizations that assist battered individuals, Legal Aid, etc.

In addition to sending the Update Packages to each applicant and advocacy organizations, a PHA would advertise, using a display advertisement, not a legal advertisement, in at least two papers of general

¹⁷ A stamped envelope addressed to the PHA would usually be included.



circulation and, one in the primary language of the LEP population being served to let applicants know that the PHA will be updating the waiting list and where applicants can go to obtain an Update Package if they do not receive one in the mail.

Applicants can be allowed at least one calendar week from the date when the Update Package is received by the applicant to respond to the PHA, either by mailing back the Update form (in the envelope provided) or by hand delivering it back to the PHA Occupancy Office.

Applicants Who Fail to Respond: Second Notice

The PHA would begin entering update information as applicants return it. A list of all Packages returned would be updated daily. Three weeks after the first mailing, a second mailing can be sent out in order to reach applicants who have not responded.

The second mailing will not include the update form. It would be a letter that instructs the applicant to come to the PHA to obtain and complete an Update Form in person at the Occupancy Office. Applicants could produce picture identification in order to update their applications at the Occupancy Office. The PHA would usually have Occupancy Technicians available to help applicants complete the Update package.

Applicants would usually be given one calendar week from the date the second letter is received to report, in person, to the PHA. However, ultimately, the PHA's ACOP will provide guidance in this area.

If applicants fail to respond to either of the PHA's update letters or if the letters are returned postmarked undeliverable, the PHA would withdraw their applications. Letters returned by the post office are always filed unopened. To maximize the response rate, PHAs should inform applicants of their responsibility to inform the PHA of any changes in contact information.

Reasonable Accommodation of Applicants with Disabilities

PHAs are required to provide reasonable accommodations for applicants with disabilities. Such reasonable accommodations should include but not be limited to:

- Providing update materials in formats requested by applicants;
- Providing sign language interpreters for applicants with hearing impairments;
- Permitting applicants to be represented by a family member, advocate, case worker or other person designated by the applicant;
- Contacting the applicant in the manner designated by the applicant;



- Conducting interviews or completing paperwork at a site other than the PHA Occupancy Office for applicants who cannot come to the office for some reason connected with a disability;
- Granting extended time for response to persons who cannot respond within the timeframes described above because of a disability; and
- Reinstating applicants with disabilities who do not respond in the timeframes described above because of a verified reason connected to a disability.

Completing the Waiting List Update

After all the responses have been received from applicants who confirm their continued interest in the PHA's public housing, the Occupancy Staff complete the data entry of the Update forms and re-order the waiting list according to the updated information such as for example, applicant income, preferences, or need for accessible unit features.

3.8 Removing Applicants from the Waiting List

A PHA may only remove applicants from the waiting list because they have been housed, they have requested that their names be removed, their applications have been withdrawn or rejected, or they have refused an offer of housing without good cause (24 CFR § 960.206).

Applicants' names may be withdrawn or removed either at their request or because the PHA is unable to contact them to follow up on their application. No informal hearing is required following withdrawal of an application, although the PHA usually maintains files of withdrawn applications for three years or until the next HUD occupancy audit.

If the reason an applicant with disabilities did not respond to the PHA's attempts to contact him/her is related to the disability, the PHA should, as a reasonable accommodation, reinstate the applicant in the former position on the waiting list.

Applicants whose applications are rejected (either because they are ineligible or because they do not pass screening) are entitled to an informal hearing if requested in a timely manner. Chapter 4 describes the procedure on Informal Hearings for Rejected Applicants. The files of rejected applicants would typically be maintained for three years or until the next HUD occupancy audit.

Withdrawing an Application From the Waiting List

A PHA may remove/withdraw an applicant's name from the waiting list under the following circumstances:



- The applicant requests that the name be removed;
- The applicant has failed to advise the PHA of his/her continued interest in public housing during the waiting list update. This includes failing to notify the PHA of any changes in family status, preference status, address;
- The PHA has made reasonable efforts to contact the applicant to update the waiting list, but has been unsuccessful. Correspondence (or other methods designated by an applicant with a disability) sent by first class mail to the latest address that is returned by the Post Office will constitute documentation of reasonable effort to contact the applicant;
- The PHA has made reasonable efforts to contact the applicant to schedule interviews necessary to complete the application process or to obtain information necessary to process the application, and the applicant has failed to respond; or
- When an applicant fails to keep a scheduled interview or fails to respond to the PHA concerning information that is necessary to process the application or to maintain the waiting list, the PHA notifies the applicant in writing that he/she has 10 working days within which to reschedule the interview or provide the needed information. If the applicant fails to respond within that period, the application would be withdrawn from the waiting list. The PHA should consider mitigating circumstances such as health problems or lack of transportation in determining whether the application should be withdrawn.

Rejecting an Application for Public Housing (24 CFR § 960.203)

A PHA may reject an application and thus remove an applicant's name from the waiting list under the following circumstances: (Note: A notice of rejection is required for any of the following circumstances.)

- The PHA has notified the applicant of its intention to remove the applicant's name because the applicant is no longer eligible for public housing;
- The applicant fails to pay an outstanding balance owed to the PHA;
- The applicant fails to meet the home visit requirements in the Admissions and Continued Occupancy Policy;
- The applicant fails to complete the Pre-Occupancy Classes/Orientation;
- The applicant fails to pay an existing utility balance which results in a denial of service by the utility supplier; or
- The applicant fails the PHA's screening because of a documented tenant history of:
 - Poor past performance in meeting financial obligations, especially rent;
 - A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences that may adversely affect the health, safety or welfare of other tenants, or cause damage to the unit or development;
 - Involvement in criminal activity on the part of any applicant family member that would adversely affect the health, safety or welfare of other tenants;



- A record of eviction from housing or termination from residential programs (considering relevant circumstances);
- Inability or unwillingness to comply with the terms of the PHA's lease;
- Misrepresentation of any information related to eligibility, award of preference for admission, allowances, family composition or rent.

Removing or Dropping an Application for Refusal of a Unit Offer

In keeping with a PHA's admissions policy or PHA Plan, if an applicant receives an offer of housing and rejects the offer without good cause, the PHA may either drop the applicant to the bottom of the waiting list, with a new date and time of application or application number, or remove the applicant from the waiting list, requiring the applicant to reapply if he or she wishes to receive another unit offer. Whether an applicant is dropped to the bottom of the list or removed from the list is determined by the wording of the PHA's Tenant Selection and Assignment Plan.

3.9 Designated Housing

A PHA may designate projects or portions of a public housing project (buildings, floors or units) for occupancy by elderly families only or disabled families only. Properties with both elderly and disabled families are considered a mixed population and require no special designation.

Designation of housing requires the preparation of a designated housing plan that must be reviewed by the Resident Advisory Board, the PHA Board of Commissioners and approved by HUD.^{xxxviii} The designation plan or an application for designation must be referenced in the PHA's Annual Plan (24 CFR 903.7 (i)).^{xxxix} A new designation plan may be included with the Annual Plan but HUD approves this document on a separate track. Once approved the designation plan becomes a supporting document to the Annual Plan.

3.10 Designated Housing Plan (PIH Notice 97-12)

The elements required for a designated housing plan are as follows:

- Justification for the Designation;
- Project Description;
- Alternative Resources;
- Treatment of Current Residents Because of the Designation; and
- Eligibility of Near-Elderly Families.



Justification – PHAs must show that the Plan supports the housing goals for the jurisdiction. PHAs in communities with local consolidated plans (population is greater than 50,000) must demonstrate that the designation is consistent with the goals and priorities of the plan, that is, the designation is necessary to meet the housing needs of the jurisdiction. For PHAs in communities under 50,000, the designation plan must support the State consolidated plan. If the State plan is silent regarding a PHA’s housing goals, the plan must demonstrate that the designation is necessary to meet the low-income needs of the jurisdiction.

Project Description – PHAs must provide a description of all sites to be designated including the type of residents to which the designation will apply,^{xi} any supportive services to be provided to the residents of the designated property, and how the design and related facilities of the property accommodate the special environmental need of the intended occupants.

Alternative Resources – The plan should describe other resources (existing or proposed) that will be made available by the PHA to the residents and any applicants currently on the waiting list affected by the designation. Resources might include: voluntary transfers to other PHA units, use of Section 8 vouchers, application for additional vouchers targeted to the population affected by the designation or combinations. It is also useful to describe the notification process to residents and applicants once the designation is approved. The Plan should outline the procedures the PHA will use to advise affected applicants and residents of the availability of alternate resources and options for accessing such resources. Although not required, it is helpful to show the impact of the designation in terms of units removed from the market and the “offset” of resources available to the PHA to help mitigate the impact of designation.

Example: If a 100 unit building is designated senior only, are there vacant units at other PHA sites available for the voluntary transfers of existing younger persons with disabilities?

If the same building has a turnover of 10 units per year and younger disabled applicants historically account for half the annual admissions, the PHA could show that 5 vouchers are available to lessen impact of the designation and meet the housing needs of these families.

Treatment of Current Residents Because of the Designation - The plan must include a statement that otherwise lease compliant residents affected by the designation will not be evicted or otherwise required to vacate.^{xii} This last phrase is statutory and would address harassment or other activities by management or other residents that might be used to “force” a resident to move. Such actions are civil rights violations and are prohibited.



Families in the building may opt to move voluntarily. The PHA can foster this type of move with cash incentives or other relocation benefits. Assistance in finding a Section 8 unit, transportation to look at a vacant PHA unit at another property or another PHA property, waiver of an increased security deposit or payment of a security deposit for a family moving to Section 8 are examples of encouraged activities that could be used to encourage families to relocate voluntarily. The plan must demonstrate that the current resident will have access to comparable housing (services and design) should they decide to move.^{xlii}

Eligibility of Near-elderly Families – If there is any risk that insufficient elderly families are on the waiting list for the designated site(s), the plan should include a statement that the agency intends to admit near-elderly families in the designated building or portion of the building.

HUD will conduct a limited review of the plan to determine that it meets the statutory requirements and is required to notify the PHA of its decision not later than 60 days after receiving the plan. If approved, the term of the designation is 5 years with an update. HUD can extend the approval for an additional 2 years.

3.11 Implementing a Designated Housing Plan

When a PHA has designated housing it is a prerogative of an eligible applicant family not to opt for a unit in designated housing. The decision by an elderly or disabled family not to accept an offer of designating housing must not have a negative effect in their position or placement in the waiting list.^{xliii} They retain their position if they prefer to occupy a unit in a mixed population or general occupancy project. Families on the waiting list for a designated building should also be advised of any alternate housing resources and if interested, receive assistance to help them access such resources.

The preference system for designated housing will work in combination with requirements to match the characteristics of the family to the type of unit available, including developments with HUD-approved designated populations, if any. When such matching is required or permitted by current law, the PHA should give preference to families as described below. The ability to provide preferences for some family types will depend on unit size available.

Once a designation plan is approved, a PHAs housing stock can be classified as follows:

Projects designated for the elderly: Only elderly families may be admitted to units or buildings covered by a HUD-approved Designation Plan.

When there are insufficient elderly families on the waiting list, near-elderly families (head or spouse ages 50 to 61) may receive a priority for this type of unit if the HUD-approved Plan for designation so specified.



Projects designated for disabled families: Only disabled families (of any age) may be admitted to units or buildings that are covered by a HUD-approved Designation Plan.

Mixed population Projects: A mixed population project is a property (or portion of a property) that was reserved for elderly and disabled families at its inception and has retained that character. These projects were formerly known as elderly projects.

Elderly families and disabled families receive equal priority for admission to such units.

General Occupancy Projects: The priority for elderly and disabled families over other single persons does not apply at General Occupancy Properties unless so stated for appropriate sized units in the PHA's Annual Plan.



Chapter 4. Qualification for Admission: Applicant Selection Criteria

4.0 Overview

Establishing and enforcing fair and reasonable applicant selection criteria is the first step in creating a safe and comfortable community environment. This chapter provides guidance on applicant selection criteria and the process of its application.

Meeting the eligibility criteria for public housing or having admissions preferences does not mean that a family will automatically receive an offer of housing. In order for an offer to be made, the household must be fully *qualified*,^{xlii} meaning that the household meets both the *eligibility criteria* and *applicant selection criteria* for admission.¹⁸ The *applicant selection criteria* for admission relate to the applicant's probable lease compliance.

The PHA would reject applicant households for recent¹⁹ behavior that would warrant lease termination as a public housing resident. Certain selection criteria such as money owed from previous participation as an assisted housing resident may be considered at the time of initial determination of eligibility.²⁰ The selection criteria discussed in this chapter are derived from the lease requirements; therefore the standards applied to existing residents are also applied to potential residents.

4.1 Selection Policy and Procedures

Applicant selection policies should be set forth clearly, in writing, in each PHA's Admissions and Continued Occupancy Policy (ACOP). Many PHAs also have separate procedures that describe in detail the methods staff should use to implement the policy. Applicant selection, or screening procedures should address:

- The lease requirement being evaluated by the screening process;
- How the screening should be done (e.g., required steps, evaluation factors);

¹⁸ In recent years Federal law has changed such that some applicant households are considered ineligible due to past criminal history, especially persons evicted from housing because of drug-related criminal activity, current use of drugs or alcohol abuse.

¹⁹ Although this is not required, PHAs examine applicant history for at least the past three years.

²⁰ Often applicants will not be placed on the waiting list if, for example, they owe the PHA money from a previous public housing tenancy or as a Section 8 participant.



- Verifications required in support of the screening process; and
- The weight and consideration given to information received.

The value of clear, detailed screening procedures cannot be overstated. The mechanics of screening should balance the rights of the individual applicant and the rights of the community. If a PHA cannot articulate its screening procedures in writing, odds are the PHA is performing screening incorrectly or applying criteria inconsistently from one applicant to the next. Also, applicant selection criteria require that the PHA examines each applicant's individual behavior, not the attributes or behavior imputed to a particular group or category of persons to which the applicant may belong (24 CFR § 960.203) .

4.2 Applicant Screening: The Policy Statement

Applicants for public housing are screened according to policies set forth in the ACOP, which provides a general description of the selection criteria. The criteria should relate to the individual behavior of adult household members and be based on requirements set forth in:

- The HUD Regulations that govern admissions (24 CFR § 960.203);
- The public housing lease regulations (24 CFR Part 966); as amended by the Final Rule on Drug Abuse and other Criminal Activities published in the Federal Regulations on May 24, 2001 and incorporated into the regulations;
- Lease requirements imposed by state law; and
- Reasonable lease requirements imposed by the PHA.

A core statement of the screening criteria used in public housing might include:

- Poor past performance in meeting financial obligations, especially rent;
- A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences that may adversely affect the health, safety or welfare of other tenants, or cause damage to the unit or development;
- Involvement in criminal activity on the part of any applicant family member that would adversely affect the health, safety or right to peaceful enjoyment of the premises by other tenants;
- A record of eviction from housing or termination from residential programs (considering relevant circumstances);
- Inability to comply with the terms of the lease; and
- Misrepresentation of any information related to eligibility, including income, award of preference for admission, allowances, family composition or rent.



The policy statement contained in the Admissions and Continued Occupancy Policy (ACOP) screening need not be long or complicated. The procedures that guide staff conducting the screening process should be more detailed, describing the specific requirements applicable to each of the screening criteria and how staff should document applicant compliance with the criteria.

4.3 Screening Procedures

Screening procedures are intended to guide staff and elaborate on the policies outlined in the ACOP. Screening procedures set forth objective verification standards, explain how to interpret screening, and establish other requirements for completing screening.

A typical screening procedure might include the following elements:

- How each applicant's history will be checked: This section explains in detail the steps required to assess the applicant's performance or behavior.
- A review of the application form and screening: This section links the application form to the screening process.
- Interview checklist: This is a set of standard questions that the PHA asks the applicant. The applicant signs the checklist, certifying to its accuracy.
- Explaining the screening process: This section guides PHA staff in explaining the process to applicants in order to ensure that applicants understand what is checked and how.
- Processing screening verification forms: This section describes the forms sent to third parties.
- The home visit: This section would provide procedures for conducting the home visit (if required by the PHA), including when home visits are performed if they are not used for all applicants.
- Preliminary recommendation of admission or rejection: This section would provide guidance on evaluation of verified screening information and initial recommendation to accept or reject the applicant. In the case of rejection, the procedures allow the applicant to raise mitigating circumstances in an informal hearing.
- Applicants with disabilities: This section discusses reasonable accommodation in the screening process.

4.4 The Application Form and Screening

The application form contains key questions relating to the applicant's eligibility, preferences and tenant history. PHAs should inform applicants that failure to provide this information would result in suspension of application processing.



4.5 Explaining the Screening Process

Applicants must be informed about the applicant selection policy and what aspects of their background will be checked²¹. If an applicant is disabled and limited English proficiency that requires an alternative form of communication, the PHA should ensure that it provides this information in the appropriate format and manner. It is the legal obligation of the PHA to communicate effectively with all applicants, including those who are limited English proficiency.

4.6 Techniques and Procedures Used to Check an Applicant's History

Suggestions about applicant screening are presented below. Details on verification standards are found in Chapter 7, Verification Standards.

Past Performance Meeting Financial Obligations, Especially Rent (24 CFR § 960.203(c)(1))

The lease establishes standards for each resident with respect to the amount of rent and other charges due and timeliness of payment. In order to determine an applicant's past performance in meeting financial obligations, a PHA could take the following steps:

- PHA staff could contact the current landlord, at least one prior landlord and utility suppliers (should be initiated only if the unit will have tenant-supplied utilities). After rent payment, utility payments are the next best indicator of ability to meet shelter-related costs. (The reason for checking with prior landlords is that current landlords of dangerous, destructive or costly applicants may misrepresent or not report information to the PHA.)
- Many PHAs use credit checks to evaluate an applicant's financial history. Now that electronic credit checks are available (and inexpensive) more PHAs are using this valuable tool (both at admission and at reexamination). In evaluating a credit report, staff should give higher weight to bills that are shelter related. Failure to make payments toward purchase of a stereo system, for example, should not be considered with the same weight as failure to pay rent or utilities.²²
- Rather than run a credit check on every family, some PHAs prefer to let a poor or marginal landlord reference trigger a credit check or check of court records for prior evictions.

²¹ Some applicants might voluntarily withdraw their applications when they understand the screening process, because with their knowledge of their own tenant history they believe it would be fruitless to continue.

²² Many PHAs run credit checks on all applicants, less for the financial history information the credit check provides than for corroboration of family member names, dates and addresses of former housing, and records of outstanding judgments, liens, etc.



- As part of the financial obligations screening, many PHAs require a former PHA tenant or Section 8 participant (otherwise eligible) who applies owing a balance in either program to pay the balance before being placed on the waiting list.

Recommended Forms:

A *Landlord Verification Form* gathers information about past performance meeting rental obligations: rent payment record, late payment record, whether the landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. The form should ask if the landlord would rent to the applicant family again.

A *Utility Verification Form* covers the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name.

A *third party completes Verification of Ability to Comply with Lease Terms* if no other documentation of ability to meet financial obligations is available.

The *applicant completes Checklist-- Ability to Comply with Lease Terms* if no other documentation of ability to meet financial obligations is available.

Examples of these forms are found in Appendix VIII.

Disturbance of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect the Health, Safety or Welfare of Other Tenants, or Cause Damage to the Unit or the Development (24 CFR § 960.203(c)(2))

In many ways, behavioral problems such as disturbance of neighbors and destruction of property are more serious than a poor payment record because they can cost the PHA more in the long term, and are more difficult to address. In order to avoid admitting applicants who might engage in such behaviors, the PHA may investigate:

- Whether the applicant kept a unit clean, safe and sanitary;
- Whether the applicant ever violated health or safety codes;
- Whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much repair of damage cost;
- Whether the applicant housekeeping caused insect or rodent infestation; and
- Whether the neighbors complained about the applicant and whether the police were ever called because of disturbances.



Home Visits: PHAs that use home visits consider them to be the single most accurate screening tool. PHAs may make a home visit to some or all eligible applicants to determine whether the applicant is capable of caring for a PHA unit in a way that will not create health or safety hazards or contribute to infestation. The visit also determines whether the applicant is likely to damage a PHA unit, and whether the applicant is currently engaged in behavior or practices that would violate the PHA's lease.

- If the applicant's current unit shows a tenant-caused health or safety hazard, housekeeping that contributes to infestation, or damage caused by the applicant, the applicant may usually be rejected.
- If the applicant is not currently living under a lease with a landlord, the current housing provider should be asked to verify the applicant's ability to comply with the lease terms as they relate to care of the unit. Any area for which the applicant has upkeep responsibility should be inspected.
- If applicants are sharing housing, the PHA should inspect the common areas, not just the applicant's room(s). A family willing to live in unsanitary conditions created by others may have standards that are too low for admission. However, if there are mitigating circumstances concerning the living conditions, the PHA should consider them.
- For applicants with disabilities, if the home visit reveals housekeeping problems, the PHA should discuss with the applicant, whether, as a reasonable accommodation, someone other than the applicant (such as Chore Service, family member, friend) could care for the unit.

Recommended Forms:

The *Landlord Verification Form* referenced above can be used to check these screening criteria.

The *Home Visit Form* can be used to document the condition of the applicant's current unit.

The *PHA Police Record Verification Form* can be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest.

Verification of Ability to Comply with Lease Terms (Completed by a third party if there is no other documentation of ability to care for unit and avoid disturbing neighbors is available)

Checklist on Ability to Comply with Lease Terms (Completed by the applicant if there is no available documentation to confirm that the person has the ability to care for unit and avoid disturbing neighbors).



Involvement in Criminal Activity on the Part of Any Applicant Family Member that Would Adversely Affect the Health, Safety or Right to Peaceful Enjoyment of the Premises by Other Tenants (24 CFR § 960.203(c)(3) and 960.204)

PHAs are required to check an applicant's history of criminal activity for a history of crimes that would be lease violations if they were committed by a public housing resident. Before the screening steps are examined, consider that certain actions and behaviors require a rejection of an applicant:

- Persons evicted from federally assisted housing for drug-related criminal activities may not be admitted for three years from the date of eviction. In cases where the statute prohibits admission for a certain period of time, PHAs may now set a longer period of time for the prohibition (24 CFR § 960.203 (c) (3) (ii)).
 - Where the regulations specify a prohibition period for certain behavior, PHAs can consider the mandatory period and any extension of the discretionary period.
 - The discretionary time period for prohibition of admission can vary based on the type of activity. For example, a PHA may have a policy that an eviction where the applicant was manufacturing or dealing drugs results in a 5-year prohibition. In the case of life-time sex offender registrants, a PHA may establish long periods or a lifetime ban.
- Persons engaging in the illegal use of a drug.
 - “Currently engaged in” means the person has engaged in the activity recently enough to believe the activity is current. In drafting screening language to guide staff, PHAs should spell out what they consider to be “recent”, e.g. past month, past six months, etc.
 - In determining what constitutes “a reasonable belief” PHAs should consider that the use or pattern of use might threaten health, safety, or right to peaceful enjoyment of the premises by other residents.
- Persons convicted of methamphetamine production in assisted housing are permanently prohibited from public housing.
- Persons subject to a lifetime sex offender registration under a State sex offender registration program are barred from public housing although such prohibition may not be permanent.
- PHA must establish standards that prohibit admission to Public Housing if the PHA determines it has reasonable cause to believe that a household person's abuse or show pattern of abuse of alcohol that threatens health, safety, or right to peaceful enjoyment of the premises by other residents.^{xlv} This prohibition of admission for alcohol abuse differs from that for persons using illegal drugs. Alcohol is a legal drug and simple abuse of alcohol is not a reason to deny admission (or evict a resident). The alcohol-related behavior must threaten the health, safety or right to peaceful enjoyment of the premises by other residents before it becomes a screening or lease enforcement issue.^{xlvi}



- Aside from the permanent prohibitions to admission, PHAs may consider factors that might indicate favorable future conduct such as current participation in a rehabilitation program or completion of such a program.
- In evaluating behavior, PHAs must also consider the time, nature, and extent of the applicant's conduct and the seriousness of the offense.^{xlvii} PHAs are also permitted to exclude household members with criminal history problems thereby permitting the "new" household to qualify for admission.

Questions on History or Current Use of Illegal Drugs

- Documented current use of illegal drugs by any applicant family member is grounds to reject the applicant family. Very often the verification process reveals evidence of some drug history, but the family member contends that the drug abuse is no longer occurring. If the PHA has received objective evidence that someone in the applicant family may be a current user of illegal drugs, it is the applicant's responsibility to demonstrate that this is not the case. See Chapter 7 for a discussion of such verifications.
- PHAs should not engage in screening that excludes **former** users of illegal drugs (people in recovery). Former users in recovery whose housing histories reveal no problems that would point to future lease compliance problems are typically admitted to public housing because, very often, screening staff are unaware of the applicants' status as former substance abusers.

Recommended Forms:

The *Landlord Verification Form* referenced above can be used to check for criminal activity the landlord knows or knew about.

The *PHA Police Record Verification Form* or a police report from a law enforcement agency can be used to check for recent criminal activity or drug-related criminal activity.

A third party completes Verification of Ability to Comply with Lease Terms if there is no other documentation of ability to avoid criminal activity.

The applicant completes Checklist on Ability to Comply with Lease Terms if there is no other documentation of ability to refrain from criminal activity.

A Record of Eviction from Housing or Termination from Residential Programs

Staff can check PHA records, landlord records and court records to determine whether the applicant has been evicted from the PHA, any other assisted housing, or any other property in the recent past.



In examining past records of eviction or program termination, the PHA should carefully check into the facts. The PHA should ascertain the family's income and composition at the time of eviction or program termination, the grounds for eviction and the facts of the eviction itself, in order to obtain a full understanding of the circumstances.

Ability to Comply with the Terms of the PHA Lease

If an applicant can document that he or she is complying with lease terms equivalent to the PHA's in current and former residences, this criterion should be considered to have been satisfied. Ability to comply with PHA lease terms should be checked only in the absence of satisfactory landlord documentation.

Misrepresentation of any Information Related to Eligibility, Preferences, Allowances, Family Composition or Rent

The PHA can reject the application if, during the course of processing, it is proven that an applicant has falsified or otherwise misrepresented any facts about his/her current situation, history, or behavior in a manner that would affect eligibility, preferences, applicant selection criteria qualification, allowances or rent.

4.7 Processing the Screening Verification Forms

When the applicant is between 120 and 90 days of receiving a unit offer, screening can begin. Many PHAs perform the criminal history check first, since certain types of criminal history rule out admission. This saves time that would be spent on further applicant processing.

When the applicant has completed verification form releases (to authorize the release of information), the PHA mails or faxes out the forms. If the verifications are not returned in a timely manner, the PHA contacts the landlords or housing providers by telephone to encourage their cooperation. If it proves impossible for the staff to obtain verifications, the PHA staff notifies the applicant and request their help to obtain needed cooperation.

At the time of initial eligibility determination or not later than during the regular screening process, PHA staff can check former tenant files and former Section 8 participant files to determine whether the applicant was an adult member of a family that was evicted from the PHA, had Section 8 assistance terminated, or owes the PHA any money. The PHA can also order a check of Court records to determine whether the applicant was evicted from other housing during the same period.



4.8 Preliminary Recommendation of Admission or Rejection

A preliminary determination of admission or rejection may be based on the following:

- Responses from current and at least one former landlord: A positive or neutral response could result in a recommendation for admission;
- Responses from utility suppliers (if applicable): A positive or neutral response consistent with the landlord information could result in a recommendation for admission;

Note: The utility inquiry is limited to cases where the applicant is applying for units where there are tenant-supplied utilities.

- Responses from the Police Department: No member of the applicant family should be involved in relevant criminal activity for a recommendation of admission;
- Response from housing providers other than a private landlord (if applicable): The applicant must be considered capable of complying with PHA lease terms for a recommendation of admission;
- Credit report (as applicable): The applicant should have a neutral or good record for a recommendation of admission;

Note: Credit reports only have bearing if positive shelter payment history is not shown. A lack of credit history will not have any bearing on eligibility.

- Home Visit Report: To be recommended for admission, a PHA may consider an applicant's housekeeping habits. A neutral rating on a home visit would be sufficient enough to warrant admission.

Review of File: If, at any point in the screening process it becomes clear that an applicant will not meet the screening criteria, the file should be reviewed. If a member of the applicant family has been verified to have engaged in criminal activity or drug-related criminal activity that requires rejection, the family should be notified in writing.²³ For problems other than violations requiring rejection, the first step in a review of possible rejection is a determination of the file's completeness. If any information is missing or the case for rejection or acceptance is not compelling, the file should be returned to the staff for further work.

Mitigating Circumstances: In evaluating information related to screening the PHA is required to consider mitigating circumstances. Mitigating circumstance are facts (that can be verified) that would overcome or

²³ The family might opt to remove the member who could not pass the criminal history check rather than lose their rights to public housing.



outweigh information already gathered in the screening process. For example, if an applicant has a previous history of disturbing neighbors, but his recent behavior was much improved, the PHA could consider this a mitigating circumstance. (For discussion of mitigating circumstances and disability, see paragraph 4.10 below.) PHA staff must document the improvement in the applicant file.

Factors Not to be Considered When Screening Applicants: Pursuant to federal law, the following factors cannot be considered in making a decision to reject an application:

Race	Color
Religion	Age
National Origin	Familial Status
Sex	Disability, including mental and emotional illness
	Parental Status

Note: A PHA may not refuse to allow a family to occupy a unit with lead-based paint or lead-based paint hazards because the family has children.

Determination to Reject: The PHA should have a procedure in place for Informal Hearings for Rejected Applicants. The contents of the Rejection Letter must include a reference to the procedure for obtaining the informal hearing.^{xlviii}

Determination of Admission: If an applicant is clearly eligible and passes the screening criteria, admission shall be authorized.^{xlix}

4.9 Notice and Right to Dispute Rejection

PHAs must send a formal notice of rejection to an applicant who is rejected for admission.¹ The notice can be worded so that rejections for eligibility and for screening can be handled on the same form. If the household is rejected because of criminal activity, the notice should include language that offers the applicant a copy of the criminal records and an opportunity to dispute the accuracy and relevance of the record.

In addition, the rejection letter should:

- Clearly state the reason for the rejection;
- State the time period and process for requesting an informal hearing; and
- Provide notice to the applicant that a person with a disability has the opportunity to request consideration of reasonable accommodations.



The informal hearing for rejected applicants is not a Grievance Hearing.²⁴ The purpose of the hearing is to permit the applicant to hear the details of the reasons for rejection, present evidence to the contrary if available, and claim mitigating circumstances if possible. The person who made the original decision to reject, or a subordinate of that person, may not conduct the hearing. A written record of the hearing decision should be mailed to the applicant and placed in the applicant's file. If the hearing decision overturns the rejection, processing for admission should resume (24 CFR § 960.208).

4.10 Applicants with Disabilities

It is illegal to reject an applicant because he or she has a disability, or for reasons that could be overcome by the PHA's reasonable accommodation of the applicant's disability. If, even with reasonable accommodation, applicants with disabilities cannot meet essential lease requirements, it is permissible to reject them.

Such insurmountable problems might arise because of behavior or performance in past housing, inability to comply with the terms of the PHA's lease, or services needed from PHA staff that represents an alteration in the fundamental nature of the PHA's program (24 CFR § 100.202). There are three possible stages of processing the applications of persons with disabilities.

Eligibility Review

The first stage of processing the application is the determination of program eligibility. As stated in Chapter 1, under the Fair Housing Act, it is unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of a disability of such persons. Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addicted to a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. For example, a PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in a mixed population (elderly/disabled) housing; and

²⁴ Only PHA residents are entitled to grievance hearings.



- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means that a PHA may ask applicants if they need units with accessible features.

As implied above, disabled family status qualifies the member for a special deduction in rent computation and confers a preference in assigning modified and accessible units and in buildings designated for persons with disabilities. Once an applicant has been determined to have a disability, no further reference should be made to that fact unless the application reaches the third stage of processing.

Applying the Applicant Selection Criteria

The second stage of processing is applying the screening criteria. An applicant who happened to have a disability but was able to demonstrate a history of meeting financial obligations, caring for a rental unit, avoiding disturbing neighbors and destroying property, avoiding criminal behavior, etc., would be recommended for admission with no further reference to or consideration of the disability.

Mitigating Circumstances and Reasonable Accommodations

The third stage of processing would only occur if an applicant could not meet one or more of the applicant screening criteria. At this point, applicants with disabilities are entitled to considerations to accommodate their disability.

It is recommended that PHA staff hold a second interview with any applicant known to have a disability who cannot meet one or more of the applicant screening criteria. The purpose of this interview is to determine whether it is possible to admit the applicant through consideration of mitigating circumstances or by applying a reasonable accommodation. The following steps can be taken:

- Determine if mitigating circumstances are applicable.
- If the evidence of mitigating circumstances presented by the applicant relates to a change in medical condition or course of treatment, the PHA has the right to refer such information to persons qualified to evaluate the evidence and verify the mitigating circumstance.
- The PHA also has the right to request further information reasonably needed to verify the facts that directly relate to the mitigating circumstance, even if such information is of a medically confidential nature. If the applicant refuses to provide or give access to such further information, the PHA should give no further consideration to the mitigating circumstance.
- For applicants with disabilities, the PHA must also consider reasonable accommodations to eliminate barriers to housing the applicant.¹¹ Reasonable accommodations may take the form of either physical modification(s) made to the unit, building, development or grounds, or policy or procedural changes. An example of a reasonable accommodation might be the approval of an applicant for a larger unit (waiving



the unit occupancy standards) to permit occupancy by a live-in aide who would in turn assist the applicant with some aspect of lease compliance that the applicant could not otherwise achieve.

Note: Screening personnel must keep in mind that an applicant with a disability who may, for example, be unable to care for a current apartment alone, may still comply with the lease if he or she can demonstrate that assistance with caring for the unit has been secured.^{lii} Such assistance could be in the form of a Live-in aide, or it could be a friend, family member, chore service or employee of the applicant. It is not the province of the PHA to make judgments about the best way to provide assistance, but simply to determine whether the assistance will be available.

- Accommodations, to be considered reasonable, must not cause undue financial and administrative burden and alter the fundamental nature of the PHA's public housing program. If a service is necessary for compliance with the lease, the PHA is not required to provide it to an applicant with a disability if the service is not provided to other tenants.^{liii} The PHA must consider admitting that applicant if he or she can document that the services will be provided at no cost to the PHA.
- An applicant with a disability who cannot meet the applicant screening criteria taking into account possible mitigating circumstances, reasonable accommodations by the PHA, or services needed for lease compliance verified to be provided to the applicant by others, must be rejected.^{liv}

Recommended Forms:

Statement of Individual Providing Assistance, or Statement of Agency Certifying Eligibility for Assistance Services Form

If an applicant needs help to comply with the lease terms, screening staff should obtain verifications that such assistance is available to the applicant. The Statement of Individual Providing Assistance Form or the Statement of Agency Certifying Eligibility for Assistance Services Form (including statement of Applicant Certifying Willingness to Accept Services) as appropriate can be used for this verification.

These forms verify that services necessary for admission will, in fact, be available upon admission. These forms are not structured as lease addenda. They verify that the service needed for lease compliance is in place at the time of admission. After admission, the applicant (now resident) could fire the original service provider, but if the household remains lease compliant the PHA has no reason to take lease enforcement action. The PHA's legitimate interest is in lease compliance, not in the way the resident accomplishes this. If lease compliance were not maintained, the resident would be subject to eviction for failing to meet lease obligations.



4.11 Role of Residents in Applicant Selection (24 CFR § 964.135)

At many PHAs, residents are active in various aspects of PHA operations and, understandably, take an interest in applicant selection. Where PHA residents seek a role in applicant screening:

- The PHA should be certain that all residents who will participate in applicant screening are well trained in HUD regulations governing both screening and Civil Rights, privacy rights of applicants and the PHA's policies and procedures^{lv}. Additionally, it is recommended that residents are trained in the requirements of any applicable local or state privacy and confidentiality laws.
- The role of residents should be designed to augment, not replace, the role of staff. The PHA is ultimately responsible for screening decisions and cannot shift its responsibility, even if residents wish to assume it.
- It is sensible to have residents involved in reviewing the screening information on applicants whose tenant histories are questionable or marginal. Applicants whose files clearly document serious problems should be rejected and applicants whose files reveal excellent tenant histories would be accepted. There are, however, always a sizable number of applicants whose files are spotty, with some positive and some negative information. Residents can be very helpful and productive in working with these files.
- The PHA should be certain that involving residents in the screening process does not otherwise delay filling ready units. At larger agencies, this may mean that the resident screening group should meet several times each month. An alternative is to begin the screening process earlier to allow sufficient time for the resident screening group.
- Much of the information in an applicant file is confidential (in particular, criminal history and drug rehabilitation center information). The PHA is advised that residents should review only information from which names and identifiers have been removed, and, even then, that members of the resident screening group not repeat outside of the group the information that they have learned within it.



Chapter 5. Occupancy Guidelines

5.0 Overview

This chapter provides guidance on occupancy standards for public housing. HUD does not specify the number of persons who may live in public housing units of various sizes. PHAs are permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children. A HUD Notice of Statement of Policy published in the Federal Register on December 18, 1998, states that “...an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act.” The Statement also suggests that PHAs are permitted to consider the following issues in establishing their own occupancy standards:

- Applicable state or local housing or occupancy codes (if any);
- Size and configuration of the PHA’s housing units;
- Limitations imposed by the capacity of water and sewer systems;
- Site density issues;
- Characteristics of individual families; and
- Avoiding both under-utilizing space and overcrowding families.

When HUD’s Office of Fair Housing and Equal Opportunity investigates an allegation of discrimination on the basis of familial status, it considers the above factors as well as the Statement of Policy.

5.1 State and Local Codes

Each PHA should determine whether there are state or local codes that govern the number of persons who may occupy a dwelling unit, since every jurisdiction may or may not have such codes. Substantial variation exists among the standards established by the national code organizations, and localities sometimes use these model codes but make further revisions. If a state or local occupancy code exists for the locality, then the PHA should be guided by it in determination of occupancy standards.

5.2 Sizes and Configuration of PHA Units

Most public housing units built in the program’s early years are small and have small bedrooms, but some newer units are much larger. For PHAs with a mix of smaller and larger units it is sensible to use occupancy standards that reflect the actual size and layout of the units, rather than simply pegging occupancy levels to number of bedrooms. Likewise, when dwelling units include spaces that, while not



designed as sleeping rooms, could be used as such, it is acceptable to permit larger families to occupy the units. The HUD Statement of Policy uses the example of an apartment with a den that a family chooses to use as a bedroom. In fact, few units built as public housing units have dens, but some scattered site units acquired by PHAs will have dens or other such spaces.

5.3 Capacity of Sites, Systems and Infrastructure

Some developments, primarily in rural areas, are served by on-site water and waste water systems and their occupancy may be dictated by the capacity of these systems. In older urban sites, PHAs may be concerned that the neighborhood services available and the level of open space cannot support an acceptable quality of life if every unit is occupied at maximum density. Accordingly, many PHAs today have implemented deliberate strategies to reduce densities to acceptable levels. PHAs must be mindful, however, that in developing any such strategy to use occupancy standards to manage building densities, the PHA should consider the impact of that strategy on classes of individuals protected by the Fair Housing Act. PHAs are not free to occupy every or most units with the minimal number of persons, nor may they refuse to house families with children as part of such a strategy.

5.4 Individual Family Characteristics

The Admissions and Continued Occupancy Policy (ACOP) must state the PHA's policy on the minimum and maximum number of persons who may live in units. Policies may address the following elements:

- Policies related for example to, babies under a specified age being able to share a bedroom with parents or two siblings, or persons who need a separate bedroom for reasons related to a disability;
- How the PHA will handle foster children in establishing unit size;
- Locations of units where the maximum standard is fewer than two persons per bedroom (for very small bedrooms) or more than two persons per bedroom (for very large bedrooms);
- Whether the PHA will permit applicants to be on waiting sub lists for more than one unit size, or whether the PHA requires each applicant to state the size unit for which he/she wishes to be listed;
- Whether the PHA will count an unborn child or a child in the process of being adopted as a family member in determining unit size (the PHA must count children who are added to the family by birth, adoption or court-awarded custody only after these events have occurred); and
- Whether the PHA has any special policies related to the occupancy of units of a certain size (e.g. hard-to-rent efficiencies).



Presented below is a list of principles for a PHA policy on occupancy standards.

1. Families of the appropriate size shall occupy units. This maintains the usefulness of the units, while preserving them both from excessive wear and under-utilization. It is also fully compliant with HUD rules related to Occupancy Standards. The following principles govern the size of unit for which a family will qualify. Generally, two people are expected to share each bedroom, except that units will be so assigned that:
 - It will not be necessary for persons of different generations or opposite sex, other than husband and wife, to occupy the same bedroom, although they may do so at the request of the family.
 - Exceptions to the largest permissible unit size may be made in case of reasonable accommodations for a person with disabilities.
 - Two children of the opposite sex will not be required to share a bedroom, although they may do so at the request of the family.
 - An unborn child will not be counted as a person in determining unit size. A single pregnant woman may be assigned to a one-bedroom unit. In determining unit size, the PHA will count a child who is temporarily away from the home because the child has been placed in foster care, kinship care, or is away at school.
 - A single head of household parent shall not be required to share a bedroom with his/her child, although they may do so at the request of the family.
 - A Live-in-Aide shall be assigned a bedroom, unless the disabled or elderly family agrees to accept a smaller unit.
 - Efficiency apartments will be occupied first by persons who prefer efficiencies to 1 BR units. Once applicants who prefer efficiencies have been housed, single individuals applying to Mixed Population buildings who wish to live in 1 Bedroom units (rather than efficiencies) will participate in a lottery to determine whether they will be offered a 1 BR or an efficiency.
2. A Local Housing Code of two persons per bedroom can be used as the standard for the smallest unit a family may be offered. Individual housing units with very small or very large bedrooms or other specific situations that inhibit or encourage lower or higher levels of occupancy may establish lower or higher occupancy levels. The PHA should ensure that such occupancy levels will not have the effect of discriminating on the basis of familial status.
3. The largest unit size that a family may be offered would provide no more than one bedroom per family member, taking into account family size and composition.
4. When a family applies for housing, and each year when the waiting list is updated, some families will qualify for more than one unit size. Both at application and at update, the applicant family must choose



the waiting sub list corresponding to one of the unit sizes for which they qualify. Factors that might affect the family's decision could include cultural standards; length of time the family would have to wait for smaller vs. larger units, and the age, relationship and gender of family members. Based on the family's choice, they will be placed on the appropriate waiting sub list by unit size.

The family (not the PHA) decides which size of unit they wish to be listed for (corresponding to the smallest, largest or a unit in between, for which they qualify).

5. When a family is actually offered a unit, if they no longer qualify for the unit size corresponding to the waiting sub list, they will be moved to the appropriate sub list, retaining their preferences and date and time of application. This may mean that they may have to wait longer for a unit offer.
6. A family that chooses to occupy a smaller size unit must agree not to request a transfer until their family size changes.
7. **IMPORTANT:** The unit size standards shall be discussed with each applicant family that qualifies for more than one unit size. Families will also be informed about their status and movement on the various waiting lists and sub lists maintained by PHA. Families shall be asked to declare in writing the waiting list on which they wish to be placed. If a family opts for a smaller unit size than would normally be assigned under the largest unit size standard (because, for example, the list is moving faster), the family will be required to sign a statement agreeing to occupy the unit assigned at their request until their family size or circumstances change. The PHA shall change the family's sub list at any time while the family is on the waiting list at the family's request.

5.5 Making the Best Use of Available Units

A very common failing in the area of Occupancy Standards occurs when PHAs permit long-time residents to remain in units that are significantly too large for their families even though there is demand for the size of unit in which the family is over housed. The only situations in which a family should occupy a unit with more bedrooms than family members would be:

- As a reasonable accommodation to a person with a disability (e.g., a resident with a disability has large and bulky apparatus related to the disability in the apartment and an extra bedroom is the only location where it can reasonably be stored); or
- Because there is currently no demand for the unit size the family occupies (although in this situation the family must understand that they would be required to transfer if a family with the number of persons requiring the unit size qualifies for housing;^{1vi} or
- A resident has a Live-in-Aide who needs an extra bedroom.



A second problem in the area of Occupancy Standards is overcrowding. Transferring residents who have outgrown their homes is unpopular with many PHAs because it necessitates making two units ready, the one the family moved to and the one they are moved from. PHAs cannot, however, adopt a “no transfer” policy for overcrowded families because this results in unsafe and substandard conditions. The obligation of the PHA to operate decent, safe and sanitary housing comes directly from the Annual Contributions Contract with HUD.



Chapter 6. Processing Applications

6.0 Overview

This chapter offers practical guidance about the logistics of processing public housing applications, from the first step of accepting applications through the process of making a unit offer and the final step of leasing the unit. The suggestions included are supplemented by many other sections of this Guidebook, as referenced in the text.

The process of taking and processing applications imposes a heavy burden on PHAs. Well-managed PHAs design their procedures to reflect their capabilities and limitations as well as the local demand for public housing while following statutory and regulatory compliance. Whether a PHA uses a one-step application or a two-step pre-application and full application depends on the local demand for public housing. In a tight market with long waiting lists, a two-step application process makes sense, since some applicants will either give up or move long before they reach the top of the waiting list. If waiting lists are short or non-existent, PHAs have an incentive to process applicants as quickly as possible to avoid losing any families interested in becoming public housing residents.

In designing the application process, PHAs usually take into account internal communications between occupancy, maintenance and property management departments. PHAs also want staff to remain efficient and friendly to applicants so they can be housed quickly and in accordance with the needs of each family. This chapter contains practical guidance on:

- Compliance with law, regulations and PHA policies;
- Accessibility and plain language;
- Accepting applications for housing;
- Initial eligibility determinations;
- Applying the preference system;
- Completing/updating the application;
- Applying applicant selection criteria;
- Income targeting, income mixing and deconcentration requirements;
- Unit assignment;
- Unit offers to applicants;
- Leasing; and
- Pre-occupancy training or orientation.



6.1 Compliance with Law, Regulations and PHA Policies

Of all the activities the PHA carries out, the process of admission and occupancy imposes the heaviest burden of statutory compliance and the greatest possibility for an inadvertent error resulting in civil rights violations. Generally, PHAs have qualified staff review Admission policies regularly for compliance with ever-changing statutes and regulations. The staff will need to be trained and thoroughly monitored so that they follow the written policies as approved by the Board of Commissioners. Housing Authorities are required to keep their policies in compliance with applicable laws and rules and, to carry out any revisions in practice. The only correct and acceptable way to avoid occupancy problems is to keep policies and practices current.

6.2 Accessibility and Plain Language (24 CFR §§ 8.6 and 8.21)

PHAs are required to remain flexible in determining where and how applications are taken by making certain that they address any special arrangements needed to take the applications of disabled persons who are unable to come to the PHA office or to hear or understand PHA efforts at communication. See Chapter 1, Civil Rights, for further discussion of reasonable accommodation requirements.

Applicants with Limited English Proficiency (LEP) are to be provided with written and/or verbal PHA related information in their language upon request. The PHA is obligated to “take reasonable steps to ensure meaningful access to the information and services they provide.” Reference Executive Order #13166, dated August 11, 2000, entitled Improving Access to persons with Limited English Proficiency, for further details about this executive order.

6.3 Accepting Applications for Housing

Application Form: Before a PHA can admit a family as a resident; it must obtain a written application.^{lvii} A full application includes all the information the PHA needs to determine family eligibility, type and size of unit needed, eligibility for preferences, and rent (based upon the family's income and unit selection). A pre-application, by contrast, typically only includes information necessary to place an applicant in the right location on the applicable waiting sub list. Such information would include family size, income amount and sources, disability-related features needed, and qualification for preferences.

HUD does not provide PHAs with a standard application form. The PHA may develop its own form or use some other method of organizing the information, or use a form or method that another PHA or entity has developed. Many PHAs maintain the majority of their admission information as electronic files, with paper files limited to documents that require original signatures (such as verification forms) or



certifications (e.g. birth certificates). A sample pre-application and application form are provided in Appendix VIII, Sample Forms.

Methods for Accepting Applications: When PHAs accept in-person applications; the applicant or the interviewer may fill out the application. Many housing authorities have the applicant complete the application or pre-application, which is then reviewed by an occupancy staff person. The PHA is required to assist applicants with disabilities who cannot complete the form without help. Reasonable accommodations must be provided by the PHA for persons with disabilities.^{lviii} In addition, the PHA must “take reasonable steps to ensure meaningful access to the information and services they provide for applicants with Limited English Proficiency (LEP)” as referenced earlier. This may include an interpreter and/or written material in another language. If the PHA has a long waiting list, it may take pre-applications, and the full application may not be completed until the applicant is being processed for admission, generally within four months of receiving a housing offer. If the PHA has a short waiting list, interviews may be scheduled very quickly following the receipt of the application or pre-application.

Housing Authorities that are opening waiting lists that have been closed for extended periods often choose to take telephone, electronic or mail pre-applications.²⁵ This method prevents applicants from, for example, having to spend the night in the PHA’s parking lot to protect their place in line and is more convenient for applicants and PHA staff. If telephone or mail pre-applications are used, the PHA may publish the pre-application in the local newspapers and make the forms available at local social service agencies so that it is easier to obtain and review a pre-application. If telephone pre-applications will be taken, the PHA can rent a bank of telephones from the phone company and take the pre-applications in a relatively short period of time. The times when pre-applications will be accepted would be widely publicized at least two weeks in advance and arrangements made with social service agencies to have telephones available for applicants who might not have telephones. If mail pre-applications are used, the period during which they will be accepted must also be publicized.

When telephone or mail pre-applications are used, the PHA must sort the pre-applications by some fair and random system or lottery, since it will not be possible to sort them by date and time (many will share the same date and time).^{lix} This process will produce an application number that is equivalent to the date and time stamp PHAs use for in-person applications.

Note: PHAs are reminded that application intake and processing must be done as specified in the PHAs ACOP.

²⁵ PHA staff must reasonably accommodate applicants with disabilities and process in-person applications at their request, even if the PHA requires all other applicants to submit telephone or mail pre-applications.



6.4 Initial Eligibility Determination (24 CFR § 960.201)

A PHA must accept and process applications in accordance with HUD's regulations, the agency's Admissions and Continued Occupancy Policy (ACOP), and other written procedures and guidelines. If the PHA has a waiting list and uses a pre-application, staff may work on the early assumption that the facts certified by the applicant are correct, although all these facts will be subject to verification prior to any unit assignment or unit offer.

Housing authorities that have short or no waiting lists may choose to have applicants complete a full application immediately, avoiding the extra step of a pre-application. The full application may be completed at an initial interview. If the PHA does not conduct initial interviews, staff usually reviews the application to request any information that might be missing. PHAs collect the following information from the full application:

- Names of all persons who will live in the unit, their sex, dates of birth, and relationship to the head of household;
- Social Security numbers for those over six years of age or certification they have no number;
- Race and ethnicity;
- Criminal history of adults;
- Need for special features or other reasonable accommodations(s);
- Applicant's current physical and mailing addresses and telephone number (if any), as well as information on other places the applicant has lived in the past three to five years;²⁶
- Family characteristics or circumstances that would qualify the family for a preference if the PHA has preferences;
- Information about previous landlords and other parties the PHA might want to contact while performing applicant screening;
- Family's anticipated income for the next twelve (12) months and the sources of that income;
- Citizenship or eligible immigration status of each family member;
- Names of employers, banks, and other sources the PHA would need to contact to verify the applicant's income and deductions;
- Sources to verify the family composition; and
- Name and telephone number of a person to contact if the applicant becomes ill or otherwise incapacitated.

²⁶ Some PHAs screen applicants for the past five years, but more use the past three years although neither is required. The PHA's ACOP specifies its policy on this issue.



PHAs must provide reasonable accommodations in the interview process, including use of home visits where needed, use of third parties, reinstatement to the waiting list for persons with disabilities who fail to attend the interview for reasons related to their disabilities.^{ix} The applicant must provide certification that the disability directly impacted or substantially hampered the applicant's ability to contact the PHA. Similarly, the PHA must make accommodations for persons with Limited English Proficiency when necessary.

At the initial interview the PHA provides the applicant with information on the application process and its housing resources, including the distribution of developments, unit types and bedroom configurations within the developments. Staff also answers any questions the applicant may have on other PHA programs, special developments, screening requirements, determination of rents, or any other topic about which the applicant has questions. Finally, the applicant signs the releases that authorize information sources to submit the required third party verifications as the applicant approaches the top of the waiting list.

The initial eligibility determination usually takes place after submission of either the pre-application or the full application. As described in Chapter 2 of this Guidebook, the eligibility determination examines income, family composition, social security numbers, citizenship or eligible immigrant status and certain elements of criminal history.

6.5 Applying the Preference System (24 CFR § 960.206)

Local and ranking preferences, as well as, date and time of application are used to establish the order of placement on the waiting list. Preferences are granted to applicants who are otherwise qualified and who, at the time of the unit offer (prior to execution of a lease), meet the definitions of the preferences established by the PHA. (See Chapter 3.)

PHAs are not required to have admissions preferences so long as they are able to achieve income targeting and deconcentration without preferences. In accordance with the preferences included in the PHA's Annual Plan and ACOP, the PHA should place applicants on the waiting sub list appropriate for the size and type of unit each applicant needs. If a PHA has no local or ranking preferences, applicants on each sub list would be sorted by date and time of application or application number.

If the PHA has no other applicants for the size and type of unit needed by the applicant, the PHA should still note the applicant's waiting list position, but may begin processing the application and assembling third party verifications immediately.



The method for sorting and selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA's Annual Plan and ACOP.^{1xi}

6.6 Completing/Updating the Application

As applicants approach 120 days of receiving a unit offer, the PHA contacts and requests the applicant to come to the PHA for an interview to complete or update their applicant file.²⁷ This is the point at which the PHA begins assembling the verified information needed to confirm eligibility and compute income-based rent. (See also Chapter 7, Verification Standards, for instructions about how to carry out verifications correctly.) PHAs usually withdraw the applications of families who fail to attend their scheduled interview or who cannot be contacted to schedule an interview, subject to reasonable accommodations for people with disabilities. A PHA must notify people who have been removed from the waiting list of the opportunity to challenge the removal at an informal hearing.^{1xii}

At the same time the PHA is completing the application process and beginning to obtain verifications related to eligibility, staff usually start the screening process.

Additional information is obtained or incomplete information is completed when the family is interviewed. Skillful interviewing by the PHA can often elicit information that the PHA needs to finalize eligibility, apply the tenant selection criteria, determine the proper unit size, and obtain other information needed to process the application.

Because rent is based on income, applicants reporting zero income should be asked to provide additional information and complete a family expense form. (See Chapter 10, Income and Program Rents.)

A PHA's records with respect to applications for admission to any low-income housing assisted under the United States Housing Act of 1937, as amended, indicate for each application the date and time of receipt; the applicant's race and ethnicity; the determination by the PHA as to eligibility or ineligibility of the applicant; when eligible, the unit size(s) for which eligible; the preference, if any; and the date, location, identification, and circumstances of each vacancy offered and accepted or rejected (24 CFR § 85.42).

²⁷ PHAs with short or no waiting lists may not need two interviews, since they may begin verifications immediately after receiving the full application. Although it is not a requirement in public housing it is a good idea that verifications should not be more than 90 days old at the time of initial certification, and can be extended to 120 days with one telephone update.



6.7 Applying Applicant Selection Criteria (24 CFR § 960.202 – 205)

In selecting families for admission to its public housing program, the PHA is responsible for reviewing each applicant's rental and criminal history and suitability for tenancy – also referred to as applicant screening. At its most basic, screening looks not at an applicant's characteristics, but at his or her past behavior as a predictor of future behavior. The topic is covered in this Guidebook in detail in Chapter 4, Qualification for Admission: Applicant Selection Criteria.

The discussion here relates not to the method but to the logistics of applicant screening as a component of the admissions process. Keep in mind that the practical limitation on the age of verifications applies to screening verifications just as to those for income, assets and deductions. Thus, at well-managed PHAs screening is begun and completed in the 120 days before an applicant receives a unit offer.

Screening is the most demanding and, often, the most time consuming aspect of public housing admissions. Unlike eligibility determination, under which an applicant is either eligible or not, applicant suitability is subject to a wide range of interpretation and judgment by PHA staff. Screening decisions are more difficult when, as often happens, an applicant's tenant and/or criminal history is mixed or marginal. These cases require thoughtful decisions by trained staff and, sometimes, gathering additional information and intervention by outside agencies.

Considering the difficulty and staff time that good screening involves, it is recommended that screening begin early enough in the admissions process to ensure that it can be completed in an accurate and timely manner that will not otherwise delay or compromise admissions.

One suggestion is that the PHA examine the elements of screening and determine which take the most time, or cause the most problems and begin these aspects of screening at the point when an applicant arrives within 120 days of receiving a unit offer. In some localities criminal history screening takes a month or more, while in other locations the criminal check takes only days but landlord references are very difficult to obtain. The aspects of every applicant's background that must be examined include:^{lxiii}

- Criminal history for the period of time specified in the PHA's ACOP for each adult in the applicant family;
- Tenant history if the applicant has been living in a traditional rental setting with an arm's length landlord or landlords;



- Other evidence of ability to comply with the PHA's lease terms if the applicant has not been living in a traditional rental setting with an arm's length landlord or landlords;²⁸
- Utility history and ability to obtain utility connections in the applicant's name (for units with tenant-paid utilities); and
- Determining whether any supportive services that the applicant says he will rely upon to help him be lease compliant are actually available to that applicant.

In addition, PHAs that perform home visits or credit checks on some or all applicants must schedule and perform these functions during the screening period.

6.8 Income Targeting, Income Mixing and Deconcentration

With the passage of the Quality Housing and Work Responsibility Act (QHWRA) of 1998, Congress established an implicit goal that public housing, while not neglecting its traditional constituency of the lowest income families and individuals, must house families with a broader overall mix of eligible incomes. The income targeting provisions preserve the rights of extremely low-income families, while the deconcentration requirements are expected to deconcentrate poverty and promote income mixing. The Section 8 Housing Choice Voucher program, with its higher targeting requirements for the lowest income families, is now the primary vehicle to serve these families.

Income Targeting (24 CFR § 960.202)

The income-targeting requirement guarantees a share of available public housing to the lowest income applicants. At least 40 percent of new admissions to public housing in a fiscal year must be "extremely low-income"^{lxiv} (ELI) families (with annual incomes at or below 30 percent of the area median income).²⁹ For the Section 8 Housing Choice Voucher program the minimum admission target for ELI families is 75 percent in a fiscal year.

PHAs that manage both public housing and Section 8 vouchers can reduce their public housing 40 percent target of ELI admissions by exceeding the 75 percent Section 8 admissions target during the same PHA fiscal year. The fiscal year credit for voucher program admissions that exceed 75 percent ELI families must not exceed the lowest of:^{lxv}

- Ten (10) percent of public housing waiting list admissions during the PHA's fiscal year;

²⁸ This approach would be used for applicants who have been homeless or living with family members or friends or in some sort of institution or shelter.

²⁹ This new targeting requirement places additional emphasis on both the PHA's internal administrative tracking and the quality and timeliness of its 50058 submissions to HUD.



- Ten (10) percent of the waiting list admissions of the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or
- The number of qualifying low-income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. As used here, qualifying low-income family means a low-income family other than an extremely low-income family.

If the income range of families in need of public housing spans the range of eligible incomes, a PHA is likely to be targeting only the 40 percent of ELI families required by the law and rule. One way to consider this requirement and ensure that the annual goal is met is to make sure 4 out of every 10 applicants admitted is an ELI family. Whether a PHA is large or small, this approach will keep the PHA on track with income targeting requirements.

6.9 Unit Assignment

As described in Chapter 3, Waiting List Administration, a PHA processing applicants for admission should prepare applicant families for unit offers before the units even become vacant, based on the PHA's average turnover patterns. The applicant that should receive the assignment of a vacant unit that is ready for occupancy should:

- be eligible;
- pass screening;
- have earliest date of qualification for preference, where such preferences are utilized;
- be in the highest waiting list preference category;
- have the oldest date and time of application or lowest application number;
- have the family that is the right size and type for the unit;
- take into account income targeting and deconcentration requirements; and
- consider the family's need for special accessibility features and the features available in the unit.

It is the responsibility of the PHA to ensure that unit assignments follow the dictates of the law, rules and ACOP. Each of the elements of the unit assignment process is reviewed on the following pages.

Eligibility Determination

Unlike many determinations made by occupancy staff, the eligibility decision is either yes or no. Considering applicants' incomes, family composition, social security numbers, citizen or eligible immigrant status and whether any family members have violated the categorical exclusions for criminal



activity, the bottom line is that every family is either eligible or not. For example, a family with an annual income of two dollars over the low-income limit for their family size is not eligible. Likewise, a family that includes no members who are either citizens or eligible immigrants is not eligible.

Applicant Selection Criteria Determination

As noted in Chapter 4, the purpose of screening applicants is to attempt to avoid admitting someone who, based on their past lease compliance and criminal history, is likely to violate the PHA's lease. When screening is completed, the PHA should be relatively certain that a family is able to comply with the lease.

When the eligibility and applicant selection criteria determinations are complete, the PHA is required to notify the applicant of the approximate date of occupancy, as far as it can be determined (24 CFR § 960.208 (b)).

Waiting List Position

PHAs are expected to make unit offers in waiting list order. In summary, an applicant's waiting list position depends upon the applicant's family size and type, need for accessibility features, preference status, date and time of application or application number, for PHAs with ranking preferences, the date that a person qualified for the ranking preference and, if the PHA is administering site-based waiting lists, location preference. (Administration of the waiting list is described in detail in Chapter 3.)

For each unit there is an appropriate family, and the staff's job is to match units that are ready for leasing with the family that is in the highest waiting list position on the sub list that matches the unit, taking into account income targeting requirements and deconcentration applicable to the developments.

Occupancy Standards

When assigning units, PHA staff must take care to consider the actual size and layout of units, rather than relying simply on the number of bedrooms in determining the appropriate size of family for each unit. The units available must be occupied in accordance with the PHA's ACOP occupancy guidelines and other goals, consistent with applicable Civil Rights requirements. (This topic is covered fully in Chapter 5.) Each vacant unit has an ideal size family considering the ACOP's provisions. A family of the right size would receive the offer of the unit before another family of an alternative size.



Accessibility Issues

Units that are either accessible or adaptable (according to UFAS standards) are usually assigned first to any current tenants who need such units and second to any applicant who need them. If an applicant needs accessibility features and there are no accessible units available, the PHA should consider whether a unit may be modified to meet the tenant's needs without posing an undue financial and administrative burden for the PHA. If so, the tenant should not be passed over in assignment of units and made to wait for an accessible unit. (See Chapter 1, Civil Rights Requirements, for additional information.)

When all the elements that affect unit assignment have been dealt with, units should be assigned. This step takes place before PHA staff makes unit offers to applicants.

6.10 Unit Offers to Applicants

Several incentives exist for PHAs to adopt procedures that will limit the duration of a vacancy to the minimum amount of time necessary. Vacant unit turnaround time is an indicator of performance for PHAs and as such, is measured by the Public Housing Assessment System (PHAS). Additionally, the loss of rental income and conversely, the savings associated with rental income increases are other incentives that should serve to minimize vacant unit turnaround time.

In addition, each PHA must follow its tenant selection plan, with respect to the number of offers made to applicants.^{lxvi} The tenant selection and assignment plan may describe whether an applicant is permitted one or more offers before dropping to the bottom of the waiting list or being removed from the waiting list. (See Chapter 8, Tenant Selection and Assignment Plan.)

From a property management viewpoint, one aspect of unit offers often neglected by PHAs is showing the applicant the ready unit. Good managers make sure that not only the unit itself but also the route to the unit will show well. This means that the grounds are clean and attractive, and the walks, halls and stairwells are clean, well lit and free of graffiti. A well-prepared unit in an attractive development is much easier to lease than a dirty unit at a poorly managed site. Close coordination between occupancy and property management staff is required to make sure no time is lost in showing units. Some PHAs send the lease package to the site along with the prospective resident, so if the applicant accepts the unit, the lease can be executed without delay.

The Tenant Selection and Assignment Plan also contains the PHA's policy on the number of days an applicant will have to consider a unit offer before deciding whether to accept or refuse the offer. Under any tenant selection plan, the PHA maintains a record of the units offered, including location, date, and



the circumstances for each offer, and each refusal or acceptance. The PHA would record the reason for refusal by an applicant.

6.11 Leasing

When an applicant who is eligible and passes screening is offered and accepts a unit, the next step is lease execution. Several things happen at lease signing:

- The new resident pays the security deposit, if applicable, and pro-rated or full rent (depending upon the date the lease begins);
- The resident receives his/her keys, and information about the unit and development;
- The new resident and the PHA sign the Lead Disclosure Form;^{lxvii}
- The PHA gives the resident a written notice asking them to report deteriorated paint, and giving the name, address and phone number for reporting;^{lxviii}
- The resident receives a copy of the lease and all the required attachments;
- The resident is informed about the PHA's move-in policies (if any);
- The property manager receives the resident's file; and
- The resident's name is removed from the waiting list.

To make sure that all these events occur in a manner that is timely and convenient for the resident, it is good practice for PHAs to try to give every applicant as much notice as possible about when and where they will be offered a unit, the amount of security deposit needed at leasing, if applicable, and the amount of the pro-rated or full rent owed at lease execution. This requires that the occupancy staff stay in close contact with maintenance operations staff so they will know exactly when every unit will be ready for leasing. PHAs do not want to see ready units sitting idle. This makes the units a target for vandalism and wastes money the PHA could be collecting in rent.

Generally, occupancy staff prepares the lease package, but PHAs have differing philosophies about who should execute the lease for the PHA. Some PHAs with large jurisdictions and centralized operations have occupancy staff sign for the PHA. Other PHAs believe that signing the lease has both legal and symbolic importance and want to emphasize the property manager's role. At these PHAs, the manager signs the lease for the PHA.

PHAs may decide to let applicants who would owe large security deposits pay these deposits over time after occupancy and should be reflected in a written agreement between the PHA and the family. Such a policy must be reflected in the PHA's ACOP and lease (which describes all payments due).



6.12 Pre-Occupancy Training or Orientation

Many PHAs invest time and money preparing applicants to be good residents. Some authorities conduct a mandatory formal training program while applicants are still on the waiting list; and this should be reflected in a written agreement between the PHA and the family. Topics covered might include:

- The PHA's policies and lease;
- Resident and PHA responsibilities under the lease;
- Care of the unit;
- Requesting maintenance service;
- Paying rent;
- Obtaining service in an emergency;
- Conserving utilities;
- Information about the resident council;
- Police and security services available;
- Services available near the PHA's properties;
- Public transportation;
- Tenant fair housing rights; and
- Lead safety (information for developing the orientation is available on the HUD lead website, www.hud.gov/offices/lead).

A number of PHAs actually conduct housekeeping training for newly forming households and “award” the graduates a bucket of cleaning supplies. PHAs that do not have such complete training programs for applicants still often give orientation sessions for new residents that cover the basic information necessary to help the resident comply with the lease, become comfortable in the neighborhood and be successful in their public housing tenancies. Most people perform better if they clearly understand what is expected up front.



Chapter 7. Verification Standards

7.0 Overview

Housing Authorities are required by HUD regulations to verify information related to income, assets, preferences, deductions, and screening of applicants and residents families (24 CFR § 5.617 and 960.259). Verification ensures both the housing authority and the family that all information contained in an application or family report, including that information used to determine eligibility and income-based rent calculations is accurate. Accurate rent calculations help to achieve both HUD's and Congress' goal of using limited housing resources as correctly and efficiently as possible.

Verifications are the key to high quality occupancy administration. Income verification is particularly important in the administration of the public housing program since the income verification process plays an intricate role in determining a family's eligibility and the amount of rental subsidy the family qualifies for under the public housing program. There are several methods available for PHAs to complete third party verification of family household income as mandated by Federal regulations (§ 960.259(c)), which are discussed later in this chapter. Obtaining third-party verifications can be a time consuming process, since it relies on outside agencies to provide information. PHAs may wish to track the amount of time it takes to receive third party verifications when calculating how far in advance of a unit offer applications should be pulled from the waiting list. For annual reexaminations, a PHA needs to know how much time is needed for third-party verifications, to ensure that the reexamination can be completed in a timely manner and the resident informed of any rent increase in accordance with the lease requirements.

Developing business relationships with state and local agencies along with local employers can improve the quality and timeliness of the information received. Oftentimes, local and state agencies have the capability of providing information electronically and are willing to execute a Memorandum of Agreement or Cooperative Agreement to provide income information to PHAs. Some PHAs meet with the staff of other agencies and employers who provide income verification in order to establish good working relationships. It is equally important that the PHA respond quickly when other agencies request permitted verification of housing assistance.

PHA staff should be prepared to explain to outside organizations and individuals the obligations of public housing tenancy to help these verification sources provide informed references about an applicant's future ability to comply with lease requirements. This is particularly important when a PHA is verifying tenant history for an applicant who is not currently residing with a landlord. Applicants living with friends, family members, in shelters or quasi-institutional settings may not simply be rejected, but verifying ability to comply with the PHA's lease can be a challenge.



To obtain verifications, a PHA must obtain a release of information from the family member about whom information is being requested because sources will usually not provide information without the family member's written release.^{lxix} Although the HUD Form 9886 is still required, Appendix VIII contains sample verification request forms that request specific type of information from various sources. It is recommended that these types of forms be used, since many sources will not accept a generic release form and because the forms request the specific type of information needed by a PHA. There are some sources that provide computer-generated verifications instead of filling out forms submitted by the PHA.

Note: Some employers and agencies are equipped to provide automated verification of wages and benefits, respectively. When this type of verification is available, typically of wages, welfare benefits, social security or supplement, the PHA is encouraged to use this verification first.

The best acceptable form of verification is automated or manual up-front income verification, which has been proven to increase accuracy and efficiency in determining family eligibility and rent calculations. The up-front income verification method is a technique that enables PHAs to have income information prior to admission into the housing program and prior to or during the family reexamination process. HUD recommends that all PHAs use up-front income verification to the maximum extent possible when conducting mandatory examination of family income and composition.

The most common acceptable form of verification, which must always be pursued to the utmost extent, is third party written verification from a reliable source.^{lxx} Written verification must not be hand carried to or from the source by the family. The PHA can mail or fax the verification form to the verification source, with the release section signed by the applicable family member. When the form is completed, it can be mailed or faxed back to the PHA. Many PHAs that use mail-in verification forms provide stamped self-addressed envelopes to speed return.

If, after a thorough attempt, neither written nor oral third party verification is successful, the PHA may rely on a review of information provided by the applicant, but must document in the applicant's file why third party verification was not obtained.^{lxxi} When reviewing documents is not possible (e.g., when a family has just started a business), the PHA may require that the family sign a certification or notarized statement describing the relevant facts. In such a situation, the PHA may require a reexamination of information more often than annually. For example, many PHAs require residents with highly variable income to do quarterly reexaminations.

The PHA is the final judge of what constitutes adequate and credible documentation and verification. If staff have doubts about the veracity or reliability of information received, they should pursue alternative methods until they are satisfied that their documentation is the best available. PHA staff are not required to accept information, simply because it is offered.



This chapter examines the types of information that must be verified, the acceptable forms of verification, the duration of an acceptable verification, file documentation and quality control.

7.1 What Must Be Verified

PHAs are required to verify information relating to eligibility, assets, income, and deductions from income, admission preferences, and compliance with applicant selection criteria. Examples include:

Eligibility for admission, such as:

- Income, assets and asset income (24 CFR § 5.609);
- Divested assets (24 CFR § 5.609);
- Family composition (24 CFR § 5.403);
- Social Security numbers (24 CFR § 5.216);
- Citizenship or Eligible Immigration Status (24 CFR § 5.508); and
- Required criminal history review (24 CFR § 960.204).

Local or Ranking preferences (24 CFR § 960.206), if any, such as:

- Displacement by natural disaster, governmental action, domestic violence;
- Income targeting, income tiers, deconcentration, broad range of income goals;
- Preference for workers or those attending school;
- Veteran or serviceperson status – not specified in the regulations; and
- Living, working or being hired to work in the PHA's jurisdiction.

Deductions (24 CFR § 5.617), such as:

- Family members (other than head or spouse) under age 18;
- Age, or disability of family head or spouse;
- Disability of family members other than head or spouse;
- Full time student status of family members other than head or spouse;
- Child care costs;
- Disability assistance expenses (working families only); and
- Unreimbursed medical costs (Elderly and Disabled Families only).

Standards for Applicant Selection Criteria (24 CFR § 960.203), such as:

- Documented ability to abide by PHA lease requirements;
- Landlord references;
- Home visits;
- Credit checks;



- Previous history of tenancy, rent paying, caring for a home;
- Utility history; and
- Criminal history of all adult family members.

Special Program Requirements, if applicable, such as:

- Transitional Housing (some PHAs have a few transitional housing units);
- Congregate Housing; and
- Special Needs Housing.

7.2 Verifying Social Security Numbers

One of the most important tools for identification is an applicant's/participant's Social Security Number. Prior to admission each family member who has a Social Security Number and who is at least six years of age is required to disclose and verify that Social Security Number. New family members at least six years of age must provide this verification prior to being added to the lease. This information must be provided for children in assisted households at the first regular reexamination after turning six. When a family is adding a new baby to the lease, the PHA can help by providing Social Security Number application forms. Children on whose behalf welfare benefits are paid have social security numbers.

The best verification of the Social Security Number is the original Social Security card. If the card is not available, the PHA may accept letters from Social Security that establish and state the number.

Documentation from other governmental agencies should also be accepted that establishes and states the number. A driver's license, military ID, passport, or other official document that establishes and states the number is also acceptable. The documents used to verify social security numbers should be copied and placed in the applicant's file.

If applicants state that they do not have Social Security Numbers, the PHA should ask if the applicants have ever worked, had a bank account, received any government benefits or attended school in the United States. If applicants respond negatively to these questions and continue to state that they do not have a Social Security Number, they are required to sign a certification to this effect. An example of someone who might not have a social security number would be an eligible immigrant who is retired and living on a pension from their former country. The PHA may not require any individual who does not have a Social Security Number to obtain a Social Security Number. Most methods of verification require the Social Security Number, so the PHA should be familiar with how an applicant may obtain a Social Security Number locally.



If applicants indicate they have Social Security Numbers, but cannot readily verify them, the family cannot be assisted until verification is provided. Applicants who have Social Security Numbers but refuse to provide them are not eligible for public housing.

If a member of a tenant family indicates he/she has a Social Security Number, but cannot readily verify it, he or she shall be asked to certify to this fact and shall be given 60 days to provide the verification. If the individual is at least 62 years of age, they may be given up to 120 days at the PHA's discretion. If the individual fails to provide the verification within the time allowed, the family should be denied public housing or should have their lease terminated.

7.3 Verifying Citizenship or Eligible Noncitizen Status (24 CFR 5.500)

Section 214 of the Housing and Community Development Act of 1980, as amended, restricts HUD from making financial assistance available for noncitizens, unless they meet one of the categories of eligible immigration status specified in Section 214.

The citizenship/eligible immigrant status of each family member, regardless of age must be determined.^{lxxii} For an adult, the adult must sign the declaration.^{lxxiii} For a child, the declaration must be signed by an adult (who will be residing in the unit) who is responsible for the child.^{lxxiv} All new adult and child additions to the household also must have their status determined prior to admission to the household.^{lxxv} Evidence of eligible immigration status is required only once for each household member during continuously assisted occupancy.

Prior to being admitted, all citizens and nationals must be required to sign a declaration of Section 214 status under penalty of perjury.^{lxxvi} They should be required to show proof of their status by such means as birth certificates, passports, and baptismal certificates, military ID or military DD 214 Form.

Prior to being admitted, all eligible noncitizens that are 62 years of age must sign a declaration of Section 214 status under penalty of perjury.^{lxxvii} They should also show proof of age.

Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.^{lxxviii} The PHA should make a copy of the individual's INS documentation and place the copy in the file. The PHA also should verify their status through the INS SAVE system. If the INS SAVE system cannot confirm eligibility, the PHA should mail information to the INS so a manual verification can be made of INS records.



Evidence of Citizenship or Eligible Immigration Status

For citizens and nationals, the evidence consists of a signed declaration of U.S. citizenship. The HA verifies citizenship status through a birth certificate, U.S. passport, military identification card or DD-214 form. A photo identification card (such as a driver's license, state ID, student ID, etc.) should be used to verify that the individual listed on the birth certificate is, indeed, the applicant. Copies of all documents must be retained in the tenant file.^{lxxix}

For noncitizens, the evidence consists of the signed declaration of eligible immigration status and one of the following:

- Alien Registration Receipt Card
- Arrival-Departure Record, with one of the following annotations:
 - Admitted as Refugee Pursuant to Section 207;
 - Section 208;
 - Asylum;
 - Section 243(h);
 - Deportation stayed by Attorney General; or
 - Paroled Pursuant to Section 212(d)(5) of the INA.
- Unannotated Arrival-Departure Record, with one of the following:
 - Final court action granting asylum, if no appeal is taken;
 - Letter from INS asylum officer or district director granting asylum;
 - Court decision granting withholding of deportation; or
 - Letter from asylum officer granting withholding of deportation.
- Temporary Resident card, annotated: "Section 245A" or "Section 210"
- Employment Authorization Card, annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12"
- Receipt issued by the INS indicating that the application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified.

The INS periodically publishes additional acceptable evidence in the *Federal Register*.

Family members who do not claim to be citizens, nationals or eligible immigrants, or whose status cannot be confirmed, must be listed on a statement of non-eligible members and the head of the household must sign the list.^{lxxx}



Noncitizen students on student visas, though in the country legally, are not eligible to receive housing assistance through the public housing program, although they may be part of a “mixed” family paying a pro-rated rent if at least one family member is either a citizen or an eligible immigrant.

If no family member is determined to be either a citizen or an eligible immigrant, the family is not eligible to be admitted to public housing and must be rejected.^{lxxxii} The family’s assistance should not be denied, delayed, reduced or terminated because of a delay in the process of determining eligible status under this Section, unless the family causes the delay.

If the PHA determines that a family member has knowingly permitted an ineligible noncitizen (other than any ineligible noncitizens listed on the lease) to permanently reside in their unit, the family’s lease should be terminated. Such family should not be eligible to be readmitted to public housing for a period of 24 months from the date of termination.

Verification of Eligible Immigrant Status Using the INS SAVE System

The PHA through the INS automated system, Systematic Alien Verification for Entitlements (SAVE), conducts primary verification of the immigration status of the person. The SAVE system provides the following information: Alien Registration Number, Verification Number, First Name, Last Name and Immigration Status messages.

SAVE System users can contact 1-800-467-0375 if they have any questions regarding the INS SAVE Program. For additional guidance, see Guidebook PIH 7465.7G

7.4 Verifying Annual Income

Verification of annual income is critical to ensure program integrity and is used to determine program eligibility, award preference (if applicable) and determine income-based rents. PHAs need a thorough understanding of what constitutes income (See Chapter 10, Income and Program Rents) and to ensure that they are consistently asking every applicant and resident for all of the required information. It is critical that PHAs not make assumptions about whether someone may or may not have a particular type of income. For example, even if there are no children in the family, a family member may be receiving child support payments resulting from back payments owed to the family member. Likewise, even very low-income families may have asset income.

The verification of annual income requires PHA staff to conduct a thorough interview with the applicant/tenant. The initial interview with an applicant is pertinent, as this interview sets the groundwork for future interim and annual reexamination interviews once the applicant is housed. The



sole purpose of the interview is to obtain complete and accurate household income information in order to establish the family's eligibility and correct level of housing benefits.

While some PHAs conduct family interviews in person, some PHAs rely on mail-in interview forms. Regardless of interview type, the PHA should obtain income information from the applicant/tenant and then utilize third party verification methods to verify the sources and amounts of income reported.

Income Verification Tips:

- Projections of Annual Income shall be based on the best available information,^{lxxxii} with due consideration to the past year's income, current income rate and effective date; and shall include estimates for each income recipient in the family group (24 CFR § 960.259).
- Overtime income should be computed in accordance with verification obtained from the employer.
- The income of irregular workers should be estimated on the basis of the best information available, with consideration to earning ability and work history. Estimating the income of irregular workers is difficult at best. Some PHAs have success in requiring the resident to report actual income quarterly and adjusting the rent to reflect that actual amount (albeit one quarter behind).
- Written third-party verification (with an appropriate release) through an employer or public agency is the first form of income verification that must be attempted. Staff may update this verification by phone, with a memo to the file.
- Oral third party verification may be used if repeated efforts to obtain written third party verifications are not successful. Staff would use the employment verification form as an interview guide, note the name and title of the person interviewed, and sign and date the form.
- If third party verifications of employment through an applicant or resident's employer cannot be obtained, the PHA may review (and copy) pay stubs. It is good practice to require at least three months' of pay stubs although more may be needed if income is very erratic or the reexamination is occurring at a slow time for the individual's seasonal employment.
- PHA review of information (when neither written nor oral third party verification is successful) provided by the family such as:
 - Benefit checks or award letters, such as social security or disability award statements;
 - IRS tax forms, including Form 1099, Form 1040, Form 4506 and Form 8821;
 - W-2 forms;
 - Paycheck stubs (at least three month's worth); and
 - Child support payment canceled checks and/or award letters.



Dealing with Families that Report No Income

PHAs encounter a certain number of applicants claiming to have no income over a substantial period of time. This is only credible if the applicant has a very simple lifestyle. PHAs must determine the source of income when the family's regular expenditures conflict with their claim of zero income.

When a resident (or applicant) reports zero income, well-managed PHAs make an appointment and visit the resident in their unit to determine the likelihood of the tenant's report. If the resident has a car, a telephone, cable television, Internet service, smokes, or has other evidence of some form of income, the resident should be asked about the source of income supporting cash expenditures when zero income is reported.

In some cases, the cash expenditures can be readily explained by the presence of excluded income, such as state payments for foster children cared for by the resident. If there is no excluded income, however, the PHA must determine how the resident is maintaining the observed lifestyle in the absence of income.

Regular contributions (including non-cash contributions) to the household must be considered income if they are not for medical expenses.^{xxxiii} For example, if someone who is not a household member pays the telephone bill or car payment every month, or buys gas, tires and insurance for the car, these contributions would be considered income for the purposes of the public housing program. Appendix VIII contains a Zero Income Form that may be used to assist in determining the actual income of a family reporting zero income.

A family budget or statement of financial responsibility may be required from the applicant. Investigations may include ordering a credit report on the applicant or resident. The next section will discuss advanced verification techniques that can be used to validate (or discredit) a family's claim of no income.

7.5 Up-Front Income Verification

The use of up-front income verification has been proven to increase accuracy and efficiency in determining family eligibility and rent calculations. Up-front income verification enable PHAs to have income information prior to admission into the housing program and prior to or during the family reexamination process. The income verifications derived from up-front income verification sources are computer-generated reports, which reduce the possibility of written third party verifications being falsified to benefit the applicant/resident. The availability of up-front income verification may vary from state to state. HUD recommends that all PHAs use up-front income verification to the maximum extent possible when conducting mandatory examination of family income and composition.



Up-front income verification is available for wages, welfare benefits, social security benefits and other income sources such as child support. Some of the up-front income verification sources are listed below. Contact your local HUD Field Office for assistance.

UP-FRONT INCOME VERIFICATION - Automated (on-line access or electronic transfer of data) - Manual (obtain print out from agency)	Wages – State Wage Information Collection Agency (SWICA), The Work Number Welfare Benefits – State or local Welfare Office Social Security Benefits – Tenant Assessment Sub-System (TASS) Other Income Sources – Child Support Office, State Wage Information Collection Agency (SWICA) or other state, local or federal agency.
---	--

Some up-front verification sources available to PHAs include:

- Tenant Assessment Sub-System (TASS)**

TASS matches Social Security and Supplemental Security Income to HUD's MTCS and TRACS databases. Information on accessing TASS can be found at www.hud.gov/reac/products/tass/tass_guide_ssi.html.
- State Wage Information Collection Agencies (SWICAs)**

SWICAs (often part of the State's Department of Labor) are a source of employers and reported wages. SWICAs are required to share data with PHAs on request. SWICAs may charge a fee for providing the information and the PHA may need to enter into a Memorandum of Understanding with the SWICA for the information. For more information, see www.loc.gov/global/state/stategov.html.
- The Work Number**

The Work Number is an automated service that provides controlled access to a national database of almost 40 million employment and income records. The information should be provided to PHAs at no cost, but the turnaround time can be longer than the fee-for-service credit reports. Additional information may be found at www.theworknumber.com.
- Internal Revenue Service (IRS) Letter 1722**

The tax account listing shows the applicant/tenant filing status, exemptions claimed, adjusted gross income, taxable income, taxes paid, etc. Individuals may obtain their own listing by calling the IRS at 1-800-829-1040. PHAs can inform residents that this would be an acceptable form of third party verification.



- **Credit Bureau Association (CBA) Credit Reports**

The CBA Credit Profile comes from a consumer credit database. The credit profile contains public record information, credit relationships, inquiries and demographic information. CBA reports can be used to determine credit history and ability to pay rent. Additional information may be found at www.cbainfo.com.

Note: This source will not provide income information, however, it may be used to identify possession of assets. For example, the existence of a \$400 car note on a resident's credit report may be an indicator that the resident is working or has some source of income that may not be reported.

7.6 Limitations on Verifications Related to Disabilities and Medical Information

In general, PHAs are not permitted to inquire about and should not verify detailed information related to the nature or extent of anyone's disability or medical history. The PHA is permitted to require verification of the presence of a disability before extending any program benefits that are available specifically for persons with disabilities. Verified receipt of social security or SSI disability payments document the disability of a family member on whose behalf the payments are made, but persons who do not receive such payments may also qualify as persons with disabilities. A sample verification form is provided in Appendix VIII.

In addition, the PHA may require verification of a disability before providing a unit with accessible features or before providing a reasonable accommodation. (See discussion in Chapter 2.) A PHA's request for documentation of a person's disability should seek only the information that is necessary to determine if the person meets the definition of disability, or if a requested accommodation is needed because of a disability. It should not include a request to examine the individual's medical records nor require that an individual submit to a physical examination or other medical testing.

The PHA should inquire of **all** applicants whether a unit with special features or some other accommodation in processing is needed because of a disability. Appendix VIII contains a form the applicant may complete regarding the need for special features. In this instance, the PHA would verify the presence of a disability and whether the special unit features requested by the applicant were needed.

Similarly, if an applicant or resident requests a Disability Assistance Expense Deduction for rent computation, the PHA would verify the presence of a disability, whether the expense claimed is needed to



permit a family member (including the family member with the disability) to work, and the annual amount of the deduction claimed.

When a PHA is performing screening, it typically examines the housing histories of applicants for the past three to five years. As a general rule, this is a good practice. The PHA should, however, permit applicants with disabilities who have spent some or all of the past three to five years in medical facilities receiving treatment to provide only third-party verification of the dates (beginning to end) when they were receiving treatment and were not living in housing. The term “medical facilities” means hospitals, clinics or other institutions whose primary purpose is medical or clinical care. The term does not include halfway houses, group homes, transitional living facilities, or assisted living facilities, which are primarily housing facilities that might include a service component.

Persons treated in medical facilities may not be required to document the nature of the condition for which they were being treated, nor may they be required to divulge any other medical information, including the name of the medical treatment facility.

Since medical treatment facilities are not equivalent to housing, there being no rent charged, no responsibility for unit maintenance, no opportunity to engage in criminal conduct, and no lease in effect, the housing provider loses nothing by not being able to verify future lease compliance through medical facilities.

PHAs may require an applicant to provide other verification of ability to comply with the essential provisions of the lease, if the applicant verifies only the dates during which the applicant was in a medical facility and the period covered by the medical treatment is recent or of significant duration.

Another instance in which verification of information related to a disability would be permitted relates to the PHA’s consideration of mitigating circumstances during screening. Nothing would prohibit the PHA from seeking verification of medical information presented by an applicant with disabilities who would otherwise be unable to comply with the tenant selection criteria. Such medical information is usually offered either to explain mitigating circumstances or in seeking a reasonable accommodation.

For example, if an applicant had a poor rental history but stated that the previous history was caused by a disability that is now being successfully treated, the PHA would be permitted to verify that the:

- Applicant did, in fact, have a disability;
- Former problems were caused by the disability; and
- Present treatment can reasonably be expected to prevent the recurrence of the problems.



The PHA would neither need nor be permitted to ask for the applicant's diagnosis, description of treatment or medication or other information about the nature or extent of the disability.

If an applicant's former housing problems were due to the applicant's resisting or refusing treatment, the PHA would be justified in verifying whether the applicant would be reasonably likely to continue with the current treatment. In this instance it still would not be necessary for the PHA to obtain medical information beyond verifying the applicant's assertions about the reasons for past problems, the likelihood of continuing treatment and that the treatment will remedy the problem.

People in Recovery: A difficult issue in verification is that raised by applicants whose history suggests that they may be current users of illegal drugs, but who are claiming to be in recovery or rehabilitated. No PHA may admit a current user of illegal drugs, both because the law forbids such admissions and because of the potential for attracting drug-related crime. The Fair Housing Act explicitly states that current users of illegal drugs are not a protected class and permits providers to reject such applicants.

At the same time PHAs should not engage in screening that excludes **former** users of illegal drugs (people in recovery). Former users in recovery whose housing histories reveal no problems that would point to future lease compliance problems are typically admitted to public housing.

The PHA may request information from a drug abuse treatment facility only if the PHA has adopted one of the following policies:

- The PHA submits a request for information to a drug abuse treatment facility for all families before admission to public housing; or
- The PHA submits a request to a drug abuse treatment facility only for those applicant family members:
 - whose criminal record indicates a prior arrest or conviction for any criminal activity that may be a basis for denial of admission; or
 - whose prior tenancy records indicate that the proposed household member engaged in the destruction of property, engaged in violent activity against another person, or interfered with the right of peaceful enjoyment of the premises of other residents.

The PHA may require an applicant to document that he or she is in recovery if objective evidence (such as statements of the applicant or landlord, home visit reports, police reports, or claims by the applicant seeking consideration of mitigating circumstances) raises a question about whether the applicant is a current user of illegal drugs. The final report of the Occupancy Task Force suggested that documentation that an applicant is not illegally using a controlled substance could include:



- Verification from a reliable drug treatment counselor or program administrator stating that the applicant is in treatment, complying with the requirements of the treatment program and not currently using a controlled substance;
- Verification from a self help program (e.g. Narcotics Anonymous) stating that the applicant is participating in their program, how long the applicant has been participating, and is not currently using a controlled substance (many chapters of Narcotics Anonymous refuse to provide verifications);
- Verification from a probation or parole officer that the applicant has met or is meeting the terms of probation or parole and with respect to illegal use of a controlled substance, since often probation or parole terms include substance abuse testing; or
- A voluntary interview with a substance-abuse screening team made up of local professionals.

If none of these types of verification produce documentation that the applicant is not a current user of illegal drugs when there is significant evidence to suggest that to be the case, the PHA must reject the application.^{lxxxiv}

Alcohol Abuse and Screening: The questions about alcohol abuse and screening are different from those posed by illegal drug use. Alcohol is a legal drug, so simple use or even quiet abuse of alcohol is not grounds for rejecting an applicant unless the use or pattern of abuse of alcohol results in behavior that would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents. An applicant who is an alcoholic must meet the same screening criteria as any other applicant.^{lxxxv} If an applicant's housing history demonstrates behavior that would be a lease violation, screening staff would have grounds to reject the application, whether or not the behavior were related to the applicant's alcoholism.

On the other hand, if screening revealed past tenancy problems, but the applicant asserted that those problems had been caused by alcohol abuse that was no longer occurring, staff would verify the applicant's assertions. This would entail several steps:

- first, verifying that the negative behavior was, in fact, caused by alcohol abuse;
- next, documenting (using methods similar to those described above for former users of illegal drugs) that the applicant was no longer abusing alcohol; and finally,
- examining the applicant's housing history since entering recovery to ensure that no other screening problems still exist.

The point is that the PHA examines each applicant's behavior, not his or her alcoholism. Some people who abuse alcohol damage their own health but still never engage in behavior that would violate the lease.



7.7 Verifying Applicant Selection Criteria

As described in Chapter 4, the purpose of screening is to avoid admitting an applicant who will not honor the public housing lease. Verification standards for screening are the same as those for verifying income, preferences and other aspects of qualification for public housing. That is, third party written verifications are the preferred form of verification and other methods should be used only when third party written verification cannot be obtained.

Listed below are the approaches to verifying every applicant's performance relative to various aspects of lease compliance. All the forms referenced are provided in Appendix VIII.

Verifying Past Performance Meeting Financial Obligations, Especially Rent and Utilities (24 CFR 960.203 (c)(1))

If the applicant is currently leasing from a private landlord, this aspect of tenant history should be documented by first obtaining written third party verification from the current landlord and at least one prior landlord and utility suppliers (if applicable).

The Landlord Verification Form (Appendix VII) can be used to gather information about past performance meeting rental obligations. The Utility Verification Form (Appendix VIII) can be used to collect utility history.

- If verification of timely rental payments (and utility payments, if applicable) is received from landlord(s) and utility suppliers, no further documentation of past performance meeting financial obligations, especially rent, need be collected.
- If the applicant has no landlord reference (e.g. because of living with friends or family or in an institution or shelter) or if the landlord reference is ambiguous, an alternative method of verifying ability to meet financial obligations is a credit check on the applicant. In addition, the PHA may check court records for evidence of evictions or judgments against the applicant. The purpose of these checks is to obtain information on the applicant's past history of meeting financial obligations and future ability to make timely rent payments.
- In the absence of credible landlord references with respect to past performance meeting rental obligations, in addition to the credit check, the PHA should contact the current housing provider with a request that someone with knowledge of the applicant's behavior and abilities complete the PHA



Verification of Ability to Comply with Lease Terms Form (Appendix VIII).³⁰ This form would be used only for applicants without landlords or without credible landlord references.

Staff may also use the Checklist: Ability to Comply with Lease Terms (Appendix VIII) for interviews with applicants without landlords.

If the PHA personnel have questions about information received, they may contact the former housing provider in order to get reliable and credible documentation.

Verifying Disturbance of Neighbors, Destruction of Property, or Living or Housekeeping Habits that Would Pose a Threat to Other Tenants (24 CFR § 960.203(c)(2))

The PHA can check for these potential problems with the current landlord and at least one former landlord using the PHA Landlord Verification Form (Appendix VIII)

- In addition to checking with landlords, many PHAs make a home visit to some or all eligible applicants to verify whether an applicant disturbs neighbors, destroys property or has living or housekeeping habits that would pose a threat to other tenants. If it is not feasible or too expensive to make home visits to all applicants,³¹ a cost effective approach is for the PHA to visit only applicants that have passed the criminal history check and either do not have landlord references or have incomplete or questionable landlord references (either very good or very bad landlord references would not necessarily require a home visit, since, in the former case the applicant would pass and in the latter case the applicant would fail).

To avoid possible bias, all staff performing home visits should be trained to recognize and document properly what constitutes an unacceptable condition and apply standards equitably. Staff should note the difference between damage to the current residence that has been caused by the applicant, as opposed to

³⁰ This applies to applicants who are living with friends or relatives, applicants coming from institutions or shelters, and applicants with no housing at all. In order to get a complete enough picture of the applicant to make an informed decision about admission or rejection, PHA may have to ask a number of individuals or institutions about the applicant. The questions asked should all be about the applicant's past history of lease compliance and the applicant's future ability and willingness to abide by the terms of the PHA's lease. To ensure that persons contacted really understand the questions the PHA is asking, it may be necessary for PHA staff to make a one-page summary of the key aspects of the PHA's lease to share with verification sources. The PHA staff must consider the credibility of the sources. Friends, family, institutions and shelters may very well have a vested interest in seeing the applicant move to the PHA. Conversely, some institutions will underestimate applicant's abilities simply because applicant's responsibilities in the institutions are so limited.

³¹ If home visits are not used to screen all applicants, the PHA's ACOP should describe the policy on which applicants will be visited in order to ensure equal treatment.



substandard conditions in the unit that are the responsibility of the landlord. Applicants would be notified of home visits at least two days in advance. The PHA staff may use the PHA Home Visit Form (Appendix VIII).

To help overcome individual differences in inspectors, any inspection form should ask for a description of unacceptable conditions. The inspector should give a succinct and complete report of exactly what conditions warrant an unsatisfactory rating. For example: “Dirty dishes piled on the table and counters, dirt and food on the floor, stove and refrigerator very dirty, noticeable odor and roach infestation.”

If the applicant is not currently living under a lease with a landlord, the current housing provider should be asked to verify the applicant’s ability to comply with PHA lease terms as it relates to this criterion. Any area for which the applicant has upkeep responsibility should be inspected.

- The PHA Police Record Verification Form (Appendix VIII) or criminal history reports from police departments may be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest.
- An applicant’s behavior toward PHA staff should be considered in relation to future behavior toward neighbors. Physical or verbal abuse or threats by an applicant toward PHA staff should be noted in the file and may be the basis on which the applicant is denied housing.

Screening for a History of Criminal Activity on the Part of Any Applicant Family Member that Would Adversely Affect the Health, Safety or Welfare of Other Tenants (24 CFR § 960.203(c)(3))

Screening for a history of criminal activity is used for both eligibility and screening determinations. Involvement in criminal activity by any member of an applicant family that would adversely affect the health, safety or welfare of other tenants or drug related criminal activity could be verified using either the PHA Police Record Verification Form (Appendix VIII) or police reports. In addition, the current or former landlord should be asked to indicate problems in this area during the applicant’s tenancy.

- The PHA is directed by 24 CFR 5.903 and 24 CFR 960.204 to check all applicants’ history of criminal activity. The PHA Police Record Verification Form lists types of offenses that might be problematic in a public housing setting. To summarize, the PHA should be looking for history of crimes that would result in denial for eligibility or demonstrate lease violations if they were committed by a public housing resident. There are a wide variety of other crimes that cannot be claimed to adversely affect the health, safety or welfare of the PHA’s residents.



The PHA Police Record Verification Form requests information about all adult family members. This is important, since it is not uncommon for the head of household to be a model citizen, but to have an adult son or daughter engaged in criminal activity.

It is important for the PHA to understand what information is provided by the local police or law enforcement jurisdiction. In some areas, city police departments do not provide information to county sheriffs and local criminal information – especially misdemeanors – may not be provided to the state or national criminal databases. PHAs should, at a minimum, obtain the criminal history from all jurisdictions where the family has lived for the past three years.

If there are any costs associated with obtaining a criminal history (or any other screening information) from local, State or Federal sources, the PHA may not pass these costs along to the applicant.

A Record of Eviction From Housing or Termination From Residential Programs

Staff should use PHA records, landlord records, other court records, credit checks or other record services to verify whether the applicants has been evicted from the PHA, any other assisted housing, or any other property in the period of time used for such reviews.

- In looking at past records of eviction or program termination, the PHA should carefully review the facts. For instance, evictions experienced by applicant's who had excessive rent burdens in the private rental market should be given more consideration than applicants evicted from subsidized housing for failure to pay rent.
- The PHA should ascertain the family's income and composition at the time of eviction or program termination, the grounds for evictions and the facts of the eviction itself.
- Record of termination from residential programs should be checked with police, service agencies and with any housing providers (but not strictly medical facilities) referred by the applicant.
- The PHA is advised not to assume that facts related to former tenancy apply to an applicant, individual or group, if the new lessee is someone other than the former lessee. The PHA for the rental delinquency or other problems of the former lessee should hold the applicant accountable only if the applicant or other members of the applicant's household contributed to the cause of the involuntary termination as adults, listed on the PHA lease.
- Staff would consider the date and circumstances of any past eviction or termination in determining its relevance to PHA tenancy.



Ability to Comply With the Terms of the PHA Lease

If an applicant is able to document that he or she is complying with PHA lease terms in current and former residences through a combination of landlord references and other documentation, this criterion is satisfied. Ability to comply with PHA lease terms should be checked only in the absence of satisfactory landlord's documentation.

- Some PHAs have made a practice of a separate type of check for ability to comply with lease terms for all applicants who are over 62 or have disabilities. This is neither sensible nor legal. If any applicant can demonstrate a satisfactory history of lease compliance in prior and current housing, there is no reason to assume that the applicant will suddenly lapse into habits in public housing that violate the lease. This “presumption of disability” is a way of labeling people based on their membership in a category (“the elderly” or “people with disabilities”) rather than on their individual attributes. Instead, the PHA should focus their efforts in this area on applicants who cannot provide standard landlord or housing provider references of satisfactory lease compliance. This group may include some applicants from institutions, but will also include applicants living with family members and friends.
- If the applicant is currently living in a setting that does not require compliance with lease terms comparable to the lease used by the PHA (e.g., a homeless shelter), staff may send the Verification of Ability to Comply with Lease Terms form (Appendix VIII) to the housing provider. Staff may also complete the Checklist: Ability to Comply with Lease Terms (Appendix VIII).

7.8 Misrepresentation of Any Information Related to Eligibility, Award of Preference for Admission, Allowances, Family Composition or Rent

If, during the course of processing an application, it becomes evident that an applicant has falsified or otherwise misrepresented any facts about his/her current situation, history, or behavior in a way that affects eligibility, preferences, applicant selection criteria qualification, allowances, or rent, the application must be rejected. This provision should not be applied to minor mistakes that produce no benefit to the applicant.

7.9 Acceptable Forms of Verification

Documentation used as part of the verification process may include:

- Checklists completed as part of the interview process signed by the applicant and interviewer that identify information that must be verified for each family;



- Verification forms or letters completed and signed by third parties and returned directly to the PHA by fax or mail;
- Reports of interviews between PHA staff and verification sources;
- Letters to the PHA from third party sources or copies of letters to the applicant or resident from the third party sources;
- Copies of documents provided by the applicant such as birth certificates, social security cards, drivers licenses or other proof of identity; and
- Notes of telephone or in-person conversations with reliable sources. At a minimum, such reports should indicate the date of the conversation, source of the information, name and job title of the individual contacted, and a written summary of the information received.

7.10 Duration of Acceptable Verification

While there is no regulatory limit on the acceptable age of verifications in the public housing program, PHAs historically use only verified information that is less than 90 days old for admissions or recertification. Verified information obtained after application intake that is less than 90 days old need not be re-verified. Verifications may be extended for an additional 30 days with a telephone update. (A record of the update, including the name and title of the individual contacted, must be placed in the applicant's file.) Verified information not subject to change (such as a person's date and place of birth) need not be re-verified.

Information obtained that is subject to change, and for which verifications are more than 90 days old, should be re-verified. HUD requires that verification forms to support the PHA's admission decisions be placed in the applicant (and subsequently, the tenant) files. Information that is subject to change, such as income, assets, family composition, etc. should be verified close to certification or recertification. Preferences must be verified once, just before admission. It is up to the PHA to decide the acceptable term of the verification and whether re-verifications are needed.

7.11 File Documentation

Each applicant and tenant file must contain verification of the information listed below:^{lxxxvi}

- Names, relationship to head, birth date, social security number and citizenship or eligible immigrant status of all family members;
- Names, status in the household, birth date, social security number and citizenship or eligible immigrant status of Live-in Aides and foster children;
- Disabilities;



- Amounts and sources of income of all family members;
- Net Family Assets;
- Deductions from income (for rent computation);
- Rent computation;
- Admission preferences (if any);
- Screening information (tenant history, credit history, home visit record, verification of criminal history); and
- HUD 50058 form.

The PHA must establish a system of records management that ensure that any criminal record received by the PHA from law enforcement agencies is (1) maintained confidentially; (2) not misused or improperly disseminated; and (3) destroyed once the purpose for which the record was requested has been accomplished.^{lxxxvii} Criminal records must not be filed in the applicant or tenant files. Instead, the file should document that a criminal background check was conducted, that the applicant passed the check or did not pass the check, and the source of the information. Criminal background record checks should be retained separately from the applicant file for those applicants denied housing until the expiration of the period for requesting an informal hearing to challenge to the PHA's decision. The records should be destroyed at the expiration of the period or at the conclusion of the informal hearing or any litigation.

The PHA also must establish a system of records management that ensures that any information the PHA receives from a drug abuse treatment facility about a person is (1) maintained confidentially; (2) not misused or improperly disseminated; and (3) destroyed not later than 5 business days after the PHA makes the final decision to admit the person to public housing; or (4) destroyed following expiration of the period for filing a challenge to a PHA decision to deny housing or at the conclusion of litigation.^{lxxxviii} These records must never be retained in the applicant or tenant file, but must be retained separately and securely.



Chapter 8. Tenant Selection and Assignment Plan

8.0 Overview

The Tenant Selection and Assignment Plan, or TSAP, was established after the passage of the 1964 Civil Rights Act as a plan for selection of applicants and assignment of dwelling units to assure equal opportunity and nondiscrimination on the grounds of race, color or national origin. As civil rights protections have been expanded, the TSAP now ensures such rights to persons based on their religion, sex, disability and familial status as well.

The TSAP is the only part of the Admissions and Continued Occupancy Policy (ACOP) that requires advance HUD approval for revision. Specifically, HUD's Office of Fair Housing and Equal Opportunity must review and approve any changes to the TSAP, since this is the part of a PHA's occupancy operation most closely related to where families live.^{lxxxix} Each PHA's TSAP should address the following aspects of applicant selection and unit assignment:

- Whether the PHA will operate community-wide or site-based waiting lists or some combination of the two;
- How the PHA determines which unit to offer to an applicant when more than one unit of the right size and type is available for lease;
- How many offers of housing an applicant may refuse without good cause before being dropped from the waiting list or dropped to the bottom of the waiting list;
- The length of time an applicant is given to consider a unit offer;
- What is considered good cause for refusing a unit offer;
- How applicants may be removed from the waiting list; and
- The situations when resident transfers take priority over offers to applicants.

Although the TSAP does not contain the PHA's preference system, it requires that the PHA adhere to the duly adopted system in the offer and assignment of units. This chapter provides guidance on elements that could be included in a PHA's TSAP.

8.1 Unit Offers to Applicants

There are two generally accepted approaches to unit offers – Plan A and Plan B. Plan A is a one-offer system and Plan B provides for up to three offers. There are advantages and disadvantages to both approaches.

**Plan A: One Unit Offer**

Under Plan A, the applicant first in sequence on the waiting sub-list is offered a unit of the size and type appropriate to the applicant's needs. If the applicant refuses the offer without good cause, the applicant should either be dropped to the bottom of the waiting list or removed from the waiting list, whichever the PHA's policy requires. The PHA should be aware that under Plan A, a PHA is not required to assign tenants to a particular location, but the PHA should develop a policy for assigning tenants and should follow it consistently.

Plan B: Two or Three Unit Offers

Under Plan B, the number and location of offers an applicant receives relates to the number of vacant units at the PHA's developments. The term *location* in this context does not necessarily mean a development. If two or more developments are adjacent or within one block of each other, they should be considered one location for the purpose of offers under this Plan.

- If there is a suitable (right size and type) unit available at more than one location, the applicant is offered a unit at the location with the most vacancies. If the applicant refuses the first offer, the applicant is offered a unit at the location with the second greatest number of vacancies. If the applicant refuses the second offer, the applicant is offered a unit at a third location. If the applicant refuses the third offer without good cause, the applicant is dropped to the bottom of the waiting list or removed from the waiting list, whichever the PHA's policy requires. The three offers can be made in sequence and the applicant should refuse one offer before another is made.
- If there are only two locations with suitable vacant units, the applicant is offered a unit at the location with the most vacancies. If the applicant refuses the first offer, the applicant is offered a unit at the location with the second greatest number of vacancies. If the applicant refuses the second offer without good cause, the applicant is dropped to the bottom of the waiting list or removed from the waiting list, whichever the PHA's policy requires. The two offers should be made in sequence and the applicant should refuse one offer before another may be made.
- If there is only one location at which suitable units are available (e.g. only one development has units that are large enough), the applicant is offered a unit at that location. If the applicant refuses the offer, the applicant is offered a second unit at that location when it becomes available. If the applicant refuses the second offer without good cause, the applicant should either be dropped to the bottom of the waiting list or removed from the waiting list, whichever the PHA's policy requires.



8.2 Comparison of Plan A and Plan B

Plan A and Plan B were developed before PHAs were permitted to operate site-based waiting lists. There is no general reason for any PHA to have Plan B if they have site-based waiting lists, since applicants would only receive offers at developments where they have previously requested to be listed.

PHAs that still operate community-wide waiting lists can compare the two Plans:

- Under Plan A:
 - Each applicant gets one offer.
 - Applicants have an incentive to accept the unit offered.
 - Unless the applicant has good cause for refusing the offer, the applicant should accept it or be dropped to the bottom of or off the waiting list.
 - The amount of time spent making offers to any applicant is limited to the time it takes to make one offer.
 - The PHA's record-keeping is limited to the offer made, whether it is accepted or refused, and whether the applicant has good cause for refusal (and is entitled to another offer).
 - If PHAs have short waiting lists and allow applicants refusing an offer to be dropped to the bottom of the list, applicants may refuse offers and simply wait until they arrive back at the top of the list in hopes of receiving an offer they prefer.
- Under Plan B:
 - Applicants have greater choice of units.
 - Occupancy staff should keep track of vacancies by location at all times to ensure the proper order of offers.
 - This plan is less effective at very small housing authorities with few locations.
 - It is very difficult to lease units at locations with high vacancies, since applicants can refuse offers of these units with impunity.
 - Plan B can take three times as long as Plan A to actually lease units, since each applicant receives up to three offers, the offers should be in sequence and subsequent offers cannot be made until an applicant refuses the first and second offers.
 - Plan B can permit applicant to self segregate. and
 - Use of Plan B can increase a PHA's leasing time and turnaround time.

8.3 Site-Based Waiting Lists

These two waiting list approaches and the requirements that must be met for HUD approval of site-based waiting lists are discussed in Chapter 3. PHAs approved for site-based lists have no need of Plan B, since



applicants have full choice of locations. There are some important considerations for which a PHA must plan in the conversion to site-based operations.

- If the PHA permits applicants to choose more than one location, the PHA must make sure the applicant receives no more than one offer, not one offer at each location. A method should be in place to remove an applicant from other lists once he/she receives an offer.
- If the site-based lists are actually staffed and operated at the PHA's sites, rather than centrally, the PHA should ensure that every aspect of the process is conducted in a uniform manner to prevent disparate treatment.
- At a minimum, the criminal and drug use history screening function must continue to be centralized to comply with the records management requirements of 24 CFR § 5.903 (g).
- The management of the site-based waiting list must be fully auditable. That is, it must be possible to review the records and be certain that at every site the waiting list is ordered in accordance with the PHA's ACOP and that unit offers are made in accordance with its TSAP.

8.4 Due Process Rights for Applicants

Applications can be removed from the waiting list only when an applicant accepts an offer of housing, the applicant asks to be removed from the list, the application is withdrawn, the applicant is rejected because the applicant is either ineligible or fails screening, or the applicant refuses a unit offer. This process is described in greater detail in Chapter 4.9. Sample wording for a TSAP is found in the sample ACOP in Appendix III.

8.5 Good Causes for Applicant Refusal of Unit Offer

There are two types of "good cause" refusals of unit offers, under which an applicant would not be dropped to the bottom of or off the waiting list. The first example is when an applicant is willing to move but is unable to do so at the time of the unit offer (e.g., the applicant is in the hospital or is serving on a sequestered jury). The second type of good cause refusal occurs when an applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc. Examples of this hardship include the following:

- The unit is not ready for move-in at the time of the offer of housing. "Ready for move-in" means the unit has no Uniform Physical Condition Standard (UPCS) deficiencies. If an applicant refuses a unit because it is not ready for move-in, the applicant should be offered the next unit that is ready for move-in;



- Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities,³² so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities;
- The family demonstrates to PHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption;
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (each as listed on final application) or live-in aide necessary to the care of the principal household member;
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move;
- The unit has lead-based paint and the family includes children under the age of six; or
- An elderly or disabled family makes the decision not to occupy or accept occupancy in designated housing.

The applicant should be able to document that the hardship claimed is good cause for refusing an offer of housing. If good cause is verified, the refusal of the offer will not require that the applicant be dropped to the bottom of the waiting list or otherwise affect the family's position on the waiting list. (In effect, the family's application should remain at the top of the waiting list until the family receives an offer for which they have no good cause refusal.)

PHAs' records of units offered, including location, date, and circumstances of each offer, and each acceptance or refusal, including the reason for the refusal are subject to audit.

8.6 Determining Which Unit to Offer When More Than One Is Available

The TSAP should specify which unit should be offered when there is more than one unit of the appropriate size and type available. Most PHAs offer the unit that has been ready to rent the longest. This keeps turnaround time to a minimum, and will work regardless of whether the PHA has Plan A or Plan B, community-wide or site-based waiting lists.

³² If the applicant has a child participating in such a program.



8.7 Uniform Federal Accessibility Standards (UFAS) Accessible or Adaptable Dwelling Units

Before offering a vacant accessible unit to a non-disabled applicant, PHA should offer such units:

- First, to a current occupant of another unit of the same development, or other public housing developments under the PHA's control, having a disability that requires the special features of the vacant unit (in effect, a transfer of the occupant with disabilities from a non-adapted unit to the vacant accessible/adapted unit).
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

When offering an accessible/adaptable unit to a non-disabled applicant, the PHA may require the applicant to sign an agreement to move to an available non-accessible unit when available when either a current resident or an applicant with a disability needs the unit. This requirement should also be reflected in the lease agreement signed with the applicant.

8.8 Leasing and Occupancy of Dwelling Units

This section of the TSAP should describe the PHA's method of application processing and leasing.

Generally, PHA applications for admission and transfer are processed centrally. Initial intake, waiting list management, screening, and assigning of housing (including transfers) are made from the central office. Offers may be made in person, in writing or by phone from the central office or the development.

If the PHA intends to decentralize any aspect of occupancy operations, it should develop written standards applicable to all staff or contractors who will carry out occupancy operations. Every individual with such responsibilities should be well versed in the details of the entire Admissions and Continued Occupancy Policy and the Tenant Selection and Assignment Plan. The PHA is ultimately responsible for fair and uniform compliance with all its policies regardless of how those policies are carried out.

8.9 Transfers of Tenants

The TSAP should clearly describe the instances in which transfers of current residents will take precedence over admissions of applicants. These situations may include, for example:

- Emergencies;



- Demolition, disposition or rehabilitation of unit;
- Reasonable accommodation;
- Occupancy Standards; and
- Incentive to residents with good tenant histories.

The specific definitions of each type of transfer are covered in Chapter 11, Transfers.

Residents on the transfer list may refuse transfer offers for the “good cause” reasons cited above without losing their position on the transfer list. Residents who refuse a transfer offer without good cause may be removed from the transfer list and tenants whose transfers are mandatory are subject to lease termination. Residents are entitled to use the PHA Grievance Procedure if they are refused the right to transfer or if PHA is requiring them to transfer and they do not want to do so.



Chapter 9. Leasing Requirements

9.0 Overview

A public housing resident may occupy a public housing unit pursuant only to a lease that meets certain requirements. The public housing lease is a legal contract between a Housing Authority and a resident. The lease establishes the PHA's obligations to its residents as well as the obligations of the residents to the Housing Authority. Much of the lease is governed by the HUD regulations in 24 CFR Part 966. This chapter provides practical guidance on the various elements of the leasing process for the PHA. (See Chapter 17, General Public Housing Lease Requirements, for further guidance related to the requirements for the lease document.)

9.1 General Leasing Policy

There are several general requirements related to the leasing process, including who must sign the lease and the process of reviewing the terms of the lease with the household. The lease must be executed by the tenant and the PHA. Many PHAs require all other adult members of the family accepted as residents to execute the lease because in some states lease enforcement actions may only be brought against individuals who have signed the lease.

Before the family executes the lease, either occupancy staff or the housing manager should review the terms of the lease with the resident and answer any questions new residents may have before its execution. Staff should be sensitive to any special communications needs of new residents with disabilities and/or limited English proficiency. For instance, it may be necessary to provide a sign language interpreter for a hearing-impaired individual who requests one. Whenever possible, all the adult members of the household should be present during the review of the lease. A copy of the signed lease should be provided to the resident and a second copy should be maintained in the resident's file.

9.2 Move-in Inspections

The lease should not be signed until the dwelling unit has been inspected and documented to be in safe, decent and sanitary condition. When an applicant accepts a unit, the PHA conducts a pre-occupancy or move-in inspection with the resident or a representative of the resident. The PHA must provide the resident with a written statement or form noting the conditions of the dwelling unit and the equipment or appliances provided with the unit.^{xc} Many Housing Authorities conduct the pre-occupancy inspection using HUD's Uniform Physical Condition Standard (UPCS). PHAs may develop their own form to document the condition of the dwelling unit prior to leasing using this standard as a guide.



Any defects discovered during the move-in inspection should be corrected within 30 days of move-in. Applicants have the right to refuse a unit with serious defects as a good cause refusal (meaning that they do not lose their position on the waiting list). Once the pre-occupancy inspection is completed, the PHA and the new tenant sign the inspection form and a copy is placed in the tenant's file. Assuming the unit is accepted by the applicant, the pre-occupancy inspection form provides a written record to compare the unit's condition at the beginning of occupancy, during occupancy, and at the termination of tenancy. Some PHAs also take photographs of units just prior to move-in to provide further documentation of their condition.

9.3 Additions to the Household

Prior to leasing, families should be informed that only those persons listed on the most recent certification form and lease shall be permitted to occupy the dwelling unit.^{xci} The lease must require that the family request PHA approval of additional household members other than by birth, adoption or custody of a child in which case the family must notify the PHA of this event (24 CFR § 966.4). Families have the right to utilize the grievance procedure, if a request for an addition to the household is denied. In addition, for cases of divorce, separation or domestic violence, PHAs should establish "family break-up" policies, as does the Housing Choice Voucher Program (Section 8).

9.4 Family Sizes and the Transfer Requirement

The lease must require the tenant to agree to transfer to an appropriate size dwelling unit based on family composition upon notice by the PHA that such a unit is available.^{xcii} In this situation, the PHA would provide a written notice to the household and then transfer the household under a new lease to a different dwelling unit of the appropriate size or design.

9.5 Visitors, Guests and Unauthorized Occupants

Residents of any public housing community have the right to receive visitors and guests at their homes if they follow the policies established by the PHA for this purpose. The head of household is responsible for the conduct of their visitors and guests just as they are for the members of their own household. This includes guests' behavior inside the unit as well as anywhere on or near the PHA's premises. Thus, a guest's behavior could, if it violated the lease, cause serious problems for a resident, up to and including eviction.



The PHA will consider unauthorized occupants to be trespassers. The family in tenancy that allows an unauthorized occupant to reside in their unit is not in compliance with the lease and is subject to termination of tenancy. Some examples of unauthorized occupants include:

- A former resident of the PHA who has been evicted from a PHA development;
- Family members over age 17 or emancipated minors who moved from the dwelling unit to establish new households;
- Persons that have joined the household without undergoing screening;
- Persons that stay in the unit beyond an authorized period; and
- A person (often a relative) that came to the unit as an extended visitor because the resident needed support, for example, after a medical procedure but stayed on in the unit beyond the time needed by the resident.



PART 3: PUBLIC HOUSING INCOME AND PROGRAM RENTS



Chapter 10. Income and Program Rents

10.0 Overview

In the public housing program most families have historically paid a rent based on a percentage of their income. Obviously, this approach relies on a complete and correct identification of income before the rent formula is applied. The first part of this chapter presents information on annual income and adjusted income, the two types of income used to compute an income-based rent. The second part of the chapter presents information on rent, including income-based rent, minimum rent, flat rent and the earned income disallowance's effect on computing rent.

The Quality Housing Work Responsibility Act of 1998 (QHWRA) made significant changes to the income and rent policies in the public housing program. QHWRA gave residents the choice of paying either an income-based rent or a market-based "flat rent." In addition, PHAs were given more flexibility in establishing optional deductions and even changing the percentage of rent that can be charged. PHAs are permitted to establish other "reasonable rent systems to determine income-based rents," including:

- Flexibility to adopt permissive deductions from annual income to determine Adjusted Income. (Permissive deductions are given at the PHA's expense, since rent lost from such deductions is not compensated by increases in operating subsidy); and
- Flexibility to make revisions to the percentage of adjusted and total income paid as rent or creates some other reasonable system to determine income-based rents (so long as the resulting rent is not higher than the income-based rent using the Federal deductions and formula).

10.1 Annual Income (24 CFR § 5.609)

Annual income includes all amounts, monetary and nonmonetary,³³ that go to, or on behalf of the family head or spouse (even if temporarily absent) or to any other family member or are anticipated to be received from a source outside the family in the 12 months following admission or the effective date of the annual reexamination. Annual income includes amounts derived from assets to which any member of the family has access that are not specifically excluded by Federal regulations.

Categories of included and excluded annual income are discussed on the following pages.

³³ For example, regular non-cash contributions from persons not residing in the household.



Amounts Included in Annual Income

- a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services.

Note: PHAs must take care to verify tips, bonuses and overtime pay. The employment income verification form included in Appendix VIII queries the employer about all the forms of employment income that are considered by the regulation. When a family's earned income varies significantly from one pay period to the next because of uneven numbers of hours worked or tips or overtime, many PHAs establish quarterly reexaminations of income. This approach avoids either overestimating or underestimating income.

- b. The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income.^{xciii} An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line decline, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

Note: Most residents who own their own businesses keep much more detailed financial records than is otherwise typical. This can be helpful in projecting income, but newly established businesses may get off to a slow start and then produce more income in later years. PHAs should not simply review the previous year's records to document income for the coming 12 months. Changes in the local economy and many other factors may affect income from one year to the next. One way to deal with resident-owned businesses that produce irregular amounts of income is to set the family up on more frequent reexaminations than annual. If no other records are available, the business's checkbook can be used to document, for example, a quarter's income and expenses. The PHA may also be able to refer residents with businesses to free services, such as the Service Corps of Retired Executives, who can help them set up good financial records for the business.

- c. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only for straight-line depreciation. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. If



the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current national passbook savings rate, as determined by HUD.^{xciiv}

Note: Many PHAs mistakenly do not ask about income from assets. Since banks and investment firms report this income to the IRS on 1099 forms annually, unreported asset income may result in the family's receiving a letter from HUD informing them that their income reported to the PHA does not match the income reported to the IRS. Occupancy staff needs to know how to determine 'net family assets' correctly in order to calculate income from assets correctly, including the correct application of the "cost to dispose of the assets." Net family assets are discussed in more detail below in Section 10.1. Definition of Net Family Assets.

- d. The full amount of periodic amount received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except as provided in paragraph 10.1 Amounts Excluded from Annual Income (c) under income exclusions).

Note: This is an instance in which it is very important to know the rules. Lump-sum amounts for the delayed start of a pension or annuity are income, but the same amounts are excluded if they are Social Security or SSI. Periodic does not mean that income must be received every month. Some periodic income is received quarterly. If Social Security or other periodic receipts have deductions taken out of the gross benefit, the PHA should use the gross amount of the benefit, not the net amount after the deduction.

- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided under paragraph (c) 10.1 Amounts Excluded from Annual Income).

Note: This is another section that requires an appreciation of the difference between included and excluded income. Lump sum settlements from worker's compensation are excluded as income (although they are assets), while periodic payments from worker's compensation are included.



- f. Welfare assistance.³⁴ If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
- the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus
 - the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is radically reduced from the standard of need by applying a percentage, the amount calculated shall be the amount resulting from one application of the percentage.^{xv}

Note: In most states, there is no 'welfare rent', an amount specifically designated for shelter and utilities. Families simply receive a flat grant amount based on the number of family members or eligible family members. In these states, the entire welfare grant is used to compute rent. Only in 'welfare rent' states is it necessary to go through the computation of grant without housing portion plus maximum housing portion with one ratable reduction.

- g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions of gifts received from organizations or from persons not residing in the dwelling.

Note: Of all the forms of income that should be included in Annual Income, contributions from sources outside the household is the most often missed. One reason is that PHA staff often does not question families closely enough about periodic contributions they receive. Further, some PHAs don't understand that if a contribution is regular, it does not have to be cash. For example, if the children's grandmother (who does not live in the household) pays her daughter's telephone and cable TV bills directly to the phone and cable companies, it is income to the household. It is a regular contribution and can also be easily verified. Families who claim to have zero income (rather than having real excluded income, such as from foster care) but who have cars, cable TV, telephones, smoke cigarettes, etc. have some source of income, and the PHA should attempt to establish its value.

- h. All regular pay, special pay and allowances of a member of the Armed Forces (except for hostile fire pay, which is excluded below).

³⁴ Except see Chapter 13.5 for treatment of welfare income when a resident is sanctioned by the welfare agency for welfare fraud or failure to comply with economic self-sufficiency requirements.



Note: Unless a member of the armed services intends to return to the public housing unit and live full-time with the family, this provision encourages them to remove themselves from the lease. Otherwise all of the service person's income is counted, not just the allotment that is sent home.

Amounts Excluded from Annual Income (24 CFR § 5.609(c))

The lists of types of income that are excluded when determining Annual Income are included below. If PHA staff are not familiar with this list and do not update it periodically, they may inadvertently include in Annual Income some type of excluded income, overcharging the resident who opts for income-based rent.

- a. Income from employment of children (including foster children) under the age of 18 years;

Note: Income from the employment of the family head or spouse is always included, regardless of their ages. Only the earned income of children is excluded. Welfare assistance, SSI, and other non-earned income paid to children is always included in Annual Income.

- b. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

Note: In some states, persons are not required to have other types of income to qualify as foster parents. In such a situation, it is possible that the family's entire income would be excluded, since it is for the care of foster children.

- c. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (e) above);

Note: This section differentiates amounts received in lump sums (which are assets and excluded from income) from such amounts received as periodic payments (which are included in Annual Income).

- d. Amounts received by the family that is specifically for, or in reimbursement of, the cost of medical expenses for any family member;

Note: This exclusion is not limited to elderly and disabled families, the only families that qualify for the unreimbursed medical expense deduction from income.



- e. Income of a live-in aide, as defined in Section 2.2 Definitions of Eligible Families;
- f. The full amount of student financial assistance paid directly to the student or to the educational institution;

Note: This exclusion applies to all students, not just those eligible for the dependent deduction, and that it is not limited to assistance for tuition, books or fees.

- g. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

Note: This is the only component of income earned by service persons on the lease that is not included in Annual Income.

- h.
 - (i) Amounts received under training programs funded by HUD;
 - (ii) Amounts received by a person with a disability that are disregarded for a limited time for the purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Achieve Self Sufficiency (PASS);
 - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing Board. No resident may receive more than one such stipend during the same period of time;
 - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.^{xvii}



Note: These exclusions are generally related to participation by resident family members in training or economic self-sufficiency programs. Note that if a resident receives a stipend in excess of \$200 per month, the entire amount received is included in Annual Income. In subparagraph (v) above, the “incremental earnings” are earnings that exceed the benefits and earned income of the training participant before the earnings associated with the training began.

- i. Temporary, nonrecurring, or sporadic income (including gifts);

Note: The key element that causes the exclusion of this income is that it is neither reliable nor periodic.

- j. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- k. Earnings in excess of \$480 for each full-time student 18 years of age or older (excluding the head of household and spouse);
- l. Adoption assistance payments in excess of \$480 per adopted child;
- m. Reserved;
- n. Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts; a lump sum payment covering the period from application to determination of eligibility;

Note: This exclusion very specifically exempts from Annual Income certain delayed benefits from social security and supplemental security income. While not income, these lump sums are additions to assets. This includes a SSI lump sum payment from application to determination of eligibility.

- o. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

Note: This exclusion would apply to State homestead exemptions, for example.



- p. Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

Note: The State funds alluded to in this paragraph are paid to prevent the institutionalization of a family member.

- q. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in the above list of excluded income apply. The following list of benefits is excluded income:
- The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 [7 USC 2017 (h)];
 - Payments to volunteers under the Domestic Volunteer Service Act of 1973 [42 USC 5044 (g), 5088]; Examples of programs under this Act include but are not limited to:
 - the Retired Senior Volunteer Program (RSVP);
 - Foster Grandparent Program (FGP);
 - Senior Companion Program (SCP);
 - the Older American Committee Service Program; and
 - National Volunteer Antipoverty Programs such as VISTA, Peace Corps, Service Learning Program, and Special Volunteer Programs.
 - Small Business Administration Programs, such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE);
 - Payments received under the Alaska Native Claims Settlement Act [43 USC 1626 (a)];
 - Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes [25 USC 459e];
 - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program [42 USC 8624 (f)];
 - Payments received under programs funded in whole or in part under the Job Training Partnership Act [29 USC 1552 (b)] ;
 - Income derived from the disposition of funds of the Grand River Band of Ottawa Indians [Pub. L. 94-540, 90 Stat 2503-04]; and
 - The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims [25 USC 1407-08], or from funds held in trust for an Indian Tribe by the Secretary of Interior [25 USC 117 (b), 1407].



- r. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs [20 USC 1087 (uu)]. Examples of Title IV programs include but are not limited to:
- Basic Educational Opportunity Grants (Pell Grants), Supplemental Opportunity Grants, State Student Incentive Grants, College Work Study, and Byrd Scholarships.
 - Payments received from programs funded under Title V of the Older Americans Act of 1965 [42 USC 3056 (f)]: Examples of programs under this act include but are not limited to:
 - Senior Community Services Employment Program (CSEP);
 - National Caucus Center on the Black Aged;
 - National Urban League;
 - Association National Pro Personas Mayors;
 - National Council on Aging;
 - American Association of Retired Persons;
 - National Council on Senior Citizens; and
 - Green Thumb.
 - Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established in the Agent Orange product liability litigation;
 - Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 94 Stat. 1785);
 - The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 [42 USC 9858 (q)];
 - Earned income tax credit refund payments received on or after 1/1/91 [26 USC 32 (j)];
 - Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
 - Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990;
 - Any allowance paid under the provisions of 38 USC 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
 - Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
 - Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998.



Treatment of Assets and Determining Income from Assets

The public housing program does not have a dollar limit on the amount of assets a family can possess and still be eligible for the program, but the income produced by net family assets is counted as part of Annual Income.

Definition of Net Family Assets (24 CFR § 5.603)

Net family assets are the net cash value, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust lands, equity accounts in HUD homeownership programs, and necessary items of personal property such as furniture and automobiles.

Certain lump sums a family receives, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlements for personal or property losses are excluded from Annual Income but are expressly identified as additions to family assets.

Note: When determining the value of net family assets, deduct the cost of disposing of the asset. If an asset is an Individual Retirement Account, for example, there will be income tax and interest penalties due in the case of early withdrawal. Likewise, if a family sells stocks or bonds, they would typically have a broker's commission to pay. Certificates of deposit have penalties for early withdrawal. Sale of real estate will typically involve a commission to the real estate agent plus various sellers' settlement costs (which will vary from state to state). If a resident has to hire an attorney to obtain, for example, an insurance settlement, the lawyer's fee would be deducted to determine the net cash value.

If a family permanently transfers assets to an irrevocable trust not under the control of any family member, the value of the trust is not included as part of the Net Family Assets. Income distributed from the trust is included in Annual Income.

Example: A resident family whose relatives established an irrevocable trust for the education of the children with the requirements that the funds not be used until the children each turned 18, and then only for educational purposes. If the children were under the age of eighteen when the PHA is admitting them, the funds in this sort of trust would not be considered as part of the family's net family assets.

If a family disposes of business or family assets for less than fair market value (including into a non-revocable trust) the PHA is required to consider the net value of those assets for two years following the date of divestiture for less than fair market value. This provision does not apply to assets divested in a



foreclosure, bankruptcy, or in a divorce or separation settlement when the applicant or tenant family received some important consideration not measurable in dollar terms.

Note: When a family has divested assets, it is very important that the PHA take into account any costs of divestiture and keep track of the date of divestiture, since these divested assets will no longer be included in determining Annual Income two years from the date of divestiture.

If the combined value of net family assets is greater than \$5,000, the amount of income from assets used in determining Annual Income is the greater of:

- Actual income from the assets; or
- Percentage of the value of the assets based on the passbook savings rate³⁵ times the value of the net family assets.

A checklist is included in Appendix VIII to assist with identifying net family assets. PHAs that do not inquire about all possible assets should not be surprised if families do not understand what is included and what excluded.

10.2 Adjusted Income – Statutory Deductions (24 CFR § 5.611)

Income-based rents are calculated using adjusted income. After determining the annual income of the household a set of mandatory statutory deductions is applied. The statutory deductions are:

- \$480 for each dependent;
- \$400 for each elderly or disabled family;
- Any reasonable child care expenses necessary to enable a family member to be employed, actively seek employment or to further his or her education; and

The sum of following items, to the extent that the sum exceeds three (3) percent of Annual Income:

- Unreimbursed medical expenses for any elderly or disabled family; and
- Unreimbursed reasonable attendant and auxiliary apparatus expenses for each member of the family who is a person with a disability needed to enable an adult family member (including the member who

³⁵ Consistent with the Multi-family Housing Program, PHAs will use a standard 2% passbook rate. This is change from the prior method of determining imputed income from assets where an average of local bank rates was used.



is a person with disabilities) to work, but this allowance may not exceed the earned income of the family members age 18 and over who are able to work because of such attendant care of apparatus.

Each of the statutory deductions is discussed in the following section.

Dependent Deduction

This \$480 annual deduction is available for a member of the family (except live-in aides, foster children and foster adults who may be household members but are not family members) other than the family head or spouse, who is under 18 years of age, is a person with a disability, or is a full-time student.

Note: There is no maximum age limit for who may qualify as a full-time student.

Elderly and Disabled Family Deduction

This \$400 annual deduction is available to families whose head of household, their spouse, or a sole member who is at least 62 years of age (elderly families), or a person with a disability (disabled families). This may also include two or more such persons living together, or two or more such persons living with a live-in aide. Each Elderly or Disabled Family is limited to one \$400 deduction regardless of the number of elderly or disabled household members.

Child Care Deduction

Childcare expenses are defined as the unreimbursed amounts anticipated to be paid by the family for the care of children less than 13 years of age during the period for which annual income is computed (24 CFR § 5.603).

Such amounts are deductible from annual income only when the care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education.

The amount deducted must reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted may not exceed the amount of employment income that is included in annual income.

The PHA is charged with determining what is a reasonable amount, especially when the care is provided to further a family member's education. Unlike the employment related portion of the deduction, childcare costs for education purposes are not "capped" by the amount earned.



Surveying the cost of childcare in the community is a good method to determine when the PHA should cap the deduction. The survey would gather information on the cost per hour or per day per child, when daily care is needed (before school, all day, after school), whether care is available all year round, and any age limits imposed by the provider. Monthly costs can then be estimated, which are helpful in computing any cap to the annual amount of the deduction.

Note: If a resident claims to be paying for child care provided by an extended family member (who is not a public housing resident), the PHA may wish to verify that the child care provider is actually receiving payments by asking to review the child care provider's income tax return or canceled checks. This prevents the resident from claiming more than is actually paid.

Disability Expense Deduction

This deduction covers unreimbursed costs for attendant care or auxiliary apparatus for a disabled family member. The deduction must be applied as follows:

- The reasonable attendant and auxiliary apparatus expenses must enable an adult member of the family to be employed (including the person with disabilities).^{xvii}
- The deduction may not exceed the earned income received by adult family members who are able to work because of the care or auxiliary apparatus.

When imposing the employment income ceiling, consider:

- If the assistance enables more than one person to be employed, the PHA must combine the incomes of those persons to determine the ceiling.^{xviii}
- If an auxiliary apparatus enables the person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

The care and apparatus deduction includes, but is not limited to, the unreimbursed costs associated with:

- Attendant Care: For example, in-home care, adult day care, nursing, housekeeping, personal care, and errand services, an interpreter for persons who are hearing impaired, or a reader for persons with visual disabilities.
- Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals.



Note: When calculating the amount of the deduction, include payments on a specially- equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.

Disability assistance expenses include the cost of maintenance and upkeep of any auxiliary apparatus (e.g., the veterinarian, grooming and food costs for a service animal; the cost of maintaining the equipment that is added to a car but not the cost of maintaining the entire car).

If the apparatus is NOT used exclusively by the person with a disability, the PHA may prorate the total cost and allow a specific amount to be applied toward this deduction.

If both child care **and** a disability expense are needed to enable a person(s) in the family to work, the employment income used to justify the child care allowance for employment purposes may NOT be used to also justify disability assistance allowance.

Example -- The family pays:

Child care.....	\$100/week
Disability assistance	\$100/week
Total.....	\$200/week
The combined care enables an adult to work and earn	
	\$150/week

The total for BOTH the disability assistance allowance and the childcare allowance for employment purposes may not exceed \$150/week.

Unreimbursed Medical Expense Costs

This deduction is granted only to elderly or disabled families (See the definition in Section 10.2 Elderly and Disable Family Deduction).

A range of unreimbursed medical expenses and services can be claimed, including, but not limited to the following, to the extent that the total medical expenses exceed 3 percent of annual income (the PHA must put definition in its ACOP. Use of IRS Medical Expenses, found in IRS publication 502, as guidance is acceptable):

- Services of health care professionals and health care facilities (doctors, nurses, practical nurses, therapists, hospitals, clinics, etc.);
- Laboratory fees, X-rays and diagnostic tests, costs for blood, and oxygen;
- Medical insurance premiums (including Medicare) and the insurance deductible;



- Prescription and non-prescription medicines (non-prescription medicines should be prescribed by a licensed medical professional);
- Transportation to/from treatment including the actual cost (e.g., bus fare) or if driving by car, a mileage rate based on IRS rules or other accepted standard;
- Medical care of a permanently institutionalized family member IF his/her income is included in annual income;
- Dental treatment including fees paid to the dentist for cleaning, fluoride treatments, sealants, x-rays; fillings, braces, extractions, dentures;
- Eyeglasses and contact lenses;
- Hearing aid and batteries, wheelchair, walker, scooter, artificial limbs;
- Attendant care or periodic attendant care;
- Payments on accumulated medical bills (that will be due in the year for which annual income is computed) for the services of physicians, nurses, dentists, opticians, mental health practitioners, chiropractors Hospitals, health maintenance organizations (HMO's), out-patient medical facilities, and clinics;
- Expenses paid to an HMO;
- Purchase or rental and upkeep of equipment (e.g., where there are tenant paid utilities, the additional utility costs to the tenant because of an oxygen machine);
- Skilled, semi-skilled and unskilled nursing services;
- An assistive animal and the upkeep and care of the animal; and
- Any other medically necessary service, apparatus or medication, as documented by third party verification.

The 3 Percent “Deductible” for Disability and Medical Deductions

When only one deduction is present, the 3 percent is applied to that deduction.

Example: Medical only – Elderly family with no dependents.

Annual Income =	\$15,500
3 percent of A.I. =	\$ 465
Anticipated medical costs =	\$ 400

\$400 is less than \$465, so this family receives no medical deduction.

Note: The family would receive the \$400 deduction for being an elderly household.

Example: Attendant care/apparatus only – Single person with a disability, no dependents.



This family receives a deduction of \$1,935 for the assistive animal (\$2,400 - \$465). In addition the family will also receive the \$400 deduction for being a household headed by a person with a disability.

Annual Income =	\$15,500
3 Percent of A.I. =	\$ 465
Assistive animal care costs =	\$ 2,400
\$2,400 is greater than 3% of Annual Income, subtract	\$ 465
Deduction =	\$ 1,935

The 3 Percent “Deductible” with Both Unreimbursed Medical and Disability Expense Deductions

Families with a head or spouse who is elderly or a person with a disability may (potentially) receive both the unreimbursed medical and disability expense deductions.

Families with a member, other than the head or spouse, who is a person with a disability may only qualify for the disability expense deduction.

Example: Head of household is a senior with a disability who works part time.

Annual Income =	\$15,500
Income from employment =	\$ 6,600
Anticipated medical costs =	\$ 400
Assistive animal care costs =	\$ 3,000
Total Medical and Disability costs=	\$ 3,400
Total allowed deduction =	\$ 2,935 (\$3,400 - \$465)

This family will also receive the \$400 deduction for being a household headed by a person with a disability.

Note: If there is also a dependent under age 13 and childcare is needed for the head of house to work, the family will also qualify for the childcare deduction.

10.3 Adjusted Income – Permissive Deductions

Permissive Deductions (see 24 CFR § 5.611) are defined as additional, optional deductions that may be applied to annual income. If the PHA opts to use permissive deductions, it must have a written policy guiding their administration, and the deductions must be applied consistently. PHAs considering the use of permissive deductions should apply the following considerations when developing a new deduction.



- Permissive deductions must be included in the PHA's ACOP and granted to all families that qualify for them.
- Permissive deductions should “fill in” or complement existing income exclusions and deductions.

Permissive (and mandatory) deductions can be thought of in two ways: deductions based on need or family circumstance and deductions designed to encourage self-sufficiency or other economic purpose.

- The financial impact of implementing the permissive deductions must be carefully evaluated prior to adoption of any policy. PHAs must be able to “afford” the deduction.^{xcix} The loss of rental income is NOT compensated by an increase in operating subsidy. A PHA would be wise to determine the impact on the agency's operating budget prior to any change in policy.

Examples: A permissive deduction to exclude the amounts received for the reimbursement of medical expenses or the earned income of a full time student are of no value to the family, such amounts are already excluded from annual income.

A PHA establishes a deduction for the reasonable cost of looking for work. (Self-sufficiency)

A PHA could establish a deduction for a secondary wage earner.

The net income of a business operation is counted in annual income. A PHA could elect to reward a family member who is starting a business and provide a deduction of \$500 (or more) from the net income of any new business operation. (Such a deduction could be directly linked to Section 3 businesses.)

- PHAs should review the definitions of Annual Income and the statutory deductions used to calculate Adjusted Income. Does the proposed permissive deduction duplicate an income exclusion or mandatory deduction already addressed in the definitions of Annual or Adjusted Income? There is no reason to create such an unneeded deduction.
- For example, establishing a permissive deduction for the cost of medical insurance premiums paid by elderly or disabled families does nothing to help the family, since such costs are part of the mandatory deductions discussed earlier in this section.

Examples: A PHA establishes a medical deduction for families (not elderly or disabled) with extremely low-incomes. (Need)

A permissive deduction for household members who are going to school or vocational training on a part-time basis is more useful. Such a deduction will offset any earned income of the part-time student whose income is otherwise counted.

Although reasonable child care expenses are already deducted from annual income when work or school are involved, a PHA could establish a permissive deduction that covers reasonable transportation cost to the child care site, or transportation cost to the site, and then to work or school.



How Deductions Affect Rent

The following is a rent calculation example for a family of five, with a head of household, spouse, and three dependents.

One dependent is a person with a disability who requires care. Two dependents are in day care. Both the head and spouse are working part time. In addition to the mandatory deductions, the PHA has instituted an optional secondary wage earner deduction of \$400.

The following example is provided to illustrate the permissive deduction:

COMPONENTS OF INCOME AND RENT	FAMILY WITH STANDARD RENT CALCULATION	SAME FAMILY WITH PERMISSIVE DEDUCTION
Annual Income: No income disallowance	\$12,000	\$12,000
Adjusted Income: Statutory deductions • \$480/dependent X 3 • \$400 does not apply • Attendant \$4,000 /yr, • 3% of annual income = \$360 • Child care is \$3,600/year	\$1,440	\$1,440
	\$3,640	\$3,640
	\$3,600	\$3,600
Initial Adjusted Income	\$3,320	\$3,320
Permissive deductions Secondary wage earner deduction of \$400	NOT APPLIED	\$400
Final Adjusted Income	\$3,320	\$2,920
Income-based rent @ 30%	\$83.00	\$73.00
Minimum Rent	\$50.00	\$50.00
Rent Charged	\$83.00	\$73.00

The above example illustrates some key points about a permissive deduction's value to family and its impact on rent:

- If rent is calculated at 30 percent of monthly-adjusted income, every \$40 dollar decrease in annual income results in a \$1 decrease in rent.



- The \$400 permissive deduction in the above example yields a \$10 decrease in rent. (At 25 percent of monthly-adjusted income, every \$48 dollar decreases in annual income results in a \$1 decrease in rent. See discussion below on income-based rents.)

Impact on PHA Operating Budget

The ratios listed above are important. They can be used to isolate the impact of the deduction and then estimate the financial implications apart from any other deductions that the family may qualify for.

If the PHA has 30 families who qualify for the secondary wage earner deduction, set at \$400, the cost of that deduction in terms of rent forgone is \$300 per month (\$10 decrease X 30 families). If this is a larger PHA with 300 families qualifying, the cost of the deduction in terms of rent forgone is \$3,000 per month (\$10 decrease X 300 families).

Other Considerations

- No matter how many permissive deductions are applied, families are still required to pay the minimum rent established by the PHA.

Examples: At \$7,000 in annual income a 1 percent reduction in the percentage reduces rent from \$175/month to \$169/month, a \$6.00 reduction. To achieve this same reduction in rent using a fixed permissive deduction, a PHA would need to “value” the deduction at \$240.

At \$15,000 in adjusted income, the same 1 percent reduction reduces rent from \$375/month to \$362/month, a \$13 reduction. The \$240 deduction does not go as far for this family and produces only \$6 reduction, or \$369/month rent. For this higher income family, the deduction needs to be valued at \$520 to achieve the \$13 reduction.

- For higher income families who may be paying flat rent, adding permissive deductions will make the income-based rent lower and therefore more attractive as a rent choice.
- As adjusted income increases, reducing the percentage of income charged is a more efficient way to reduce rents. A fixed deduction loses its value to the family as income increases.

10.4 Income-Based Rent and Minimum Rent

The federal formula for income-based rents provides that a family’s Total Tenant Payment is the highest of:

- 10 percent of monthly income; or
- 30 percent of adjusted monthly income; or



- Welfare Rent (in States where the welfare payment includes a designated portion for housing costs).³⁶

But never less than the:

- Minimum Rent, except where a family has been exempted from the minimum rent because of financial hardship (24 CFR § 5.630 (b)).

With the exception of the minimum rent provision, this formula has been in place for nearly twenty years. Many PHA staff in non-Welfare rent states are used to assuming that thirty percent of adjusted income is the income-based rent, but for families with extremely low-incomes combined with high deductions, the ten percent of monthly income rent may, in fact be higher. Most automated rent calculation programs make this comparison automatically. Appendix VIII contains a rent calculation worksheet that can be used to manually calculate rent.

PHAs may establish a minimum rent (by Board resolution) in any amount between \$0 and \$50 per month. See Chapter 13 for a discussion of hardship exemptions from minimum rents.

How Optional Changes to Income-Based Rents Work

QHWRA has given PHAs very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the total tenant payment and statutory deductions.

- PHAs can now adjust the percentage of income used to calculate rent, it is no longer fixed at 30 percent of monthly adjusted, or 10 percent of monthly.
- PHAs can develop other reasonable systems to determine income-based rents (e.g. use of a rent schedule or sliding scale for rent based on income ranges).
- Rents calculated using different percentages or other “reasonable” systems cannot exceed total tenant payment under the regulatory formula.
- No matter what system or percentage is used, the PHA’s minimum rent policy and rent choice still apply to affected families.
- Once a year families can opt out of the income-based rent and pay a flat rent, or they can switch back to an income-based rent at any time under the regulation.

³⁶ If the family is receiving payments for welfare assistance from a public agency and part of those payments, adjusted in accordance with the family’s actual housing costs, is specifically designated to meet the family’s housing costs, the portion of those payments that is so designated, and, if ratably reduced from the standard of need by applying a percentage, the amount resulting from one application of the percentage.



- Utility allowances are applied to PHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.
- Rent policies may now specify what percentage a PHA will use to determine rent or PHAs may develop other reasonable systems to determine income-based rents.
- Income-based rents are charged when minimum rents do not apply and the family does not choose flat rent.
- At the discretion of the PHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.
- Keep in mind that the PHA will not receive any additional operating subsidy to make up for deductions greater than the regulatory deductions. Before adopting optional deductions it would be wise for a PHA to see how many current residents and applicants would qualify and estimate the amount of rent lost over the course of the fiscal year.
- Rental income for purposes of operating subsidy will be based on the existing regulatory formula. Therefore, PHAs will need to develop a system to track actual rents charged under the PHA's permissive deductions policy versus what would have been charged if permissive deductions were not granted. The information can then be used to estimate rental income for operating subsidy, and to continually assess the financial impact of the rent policy.

The following table summarizes the various components of income and rent.

The Components of Income and Rent

COMPONENTS	COMMENTS	CFR REFERENCE	APPLIES TO
ANNUAL INCOME (Gross income less exclusions)	Items included in income Items excluded from annual income	24 CFR § 5.609(a) & (b) 24 CFR § 5.609 (c)	Family eligibility and rent calculations at time of admission
	Disallowance (exclusion) from annual income of certain increases in earned income	24 CFR § 960.255	Applies only to rent calculations for existing public housing residents
ADJUSTED INCOME	Mandatory deductions	24 CFR § 5.611 (a)	Applies to all families for rent calculations at admission and continued occupancy
	Permissive Deductions	24 CFR § 5.611 (b)	Applies to all or selected families per PHA policy for rent calculations
RENT CHOICE	See next page.	24 CFR § 960.253	Applies to all families



COMPONENTS	COMMENTS	CFR REFERENCE	APPLIES TO
INCOME-BASED RENT	Percentage of income paid is, the greater of: 30% of monthly adjusted, 10% of monthly, or Welfare rent (if applicable)	24 CFR § 5.628	Applies to all or selected families per PHA policy for rent calculations. May be modified by PHA policy
MINIMUM RENT	For public housing a minimum rent of up to \$50 must be established	24 CFR § 5.630	Applies to all families, amount set by PHA policy
FLAT RENTS	Based on the market rent for comparable units	24 CFR § 960.253 (b)	Applies to all units
CEILING RENTS	Optional under income-based rent provision: Minimum ceiling rent is based on % of monthly operating cost until September 30, 2002. After this time, these ceiling rents must be adjusted to the level required for flat rents. PHA rent policies may continue to impose a ceiling on tenant rents.	24 CFR § 960.253 (d)	Applies to specific units, rents must have been in place 10/1/99 (ends in 3 years). After this time, these ceiling rents must be adjusted to the level required for flat rents.

Optional Changes in the Percentage of Rent Paid

The table below shows some adjusted incomes with changes in the percentage paid for rent and the rent produced by each percentage change.

PERCENT OF ADJUSTED INCOME CHARGED	ADJUSTED INCOME \$7,000	ADJUSTED INCOME \$10,000	ADJUSTED INCOME \$15,000
30%	\$175	\$250	\$375
29%	\$169	\$242	\$362
28%	\$163	\$233	\$350
27%	\$157	\$225	\$337
26%	\$152	\$217	\$325
25%	\$146	\$208	\$312



The following are examples of how a PHA policy might alter the percentage of rent paid: Extremely low-income families (30% or less of AMI) are charged a lower percentage of rent. Higher income families are charged a lower percentage of rent.

Both are examples of rent skewing by income but with very different purposes. The first example is a needs-based policy choice while the second encourages self-sufficiency efforts and income mixing.

Other Reasonable Systems

The choices here are limited only by the requirement that the method used not produce a tenant rent greater than the old formula amount and that the PHA can afford the reduction in operating income produced by rent policy choices that generate less rental income.

Example: A PHA can now opt to establish rent schedules by property or agency-wide. As long as the rents produced do not exceed the tenant rent produced under the old formula. Schedules could apply to certain income ranges, be based on adjustments to the flat rents for the property, or a combination.

Note: Under any system, proposed minimum rents and rent choice still apply.

10.5 Ceiling Rents

Ceiling rents, which capped income-based rents, have been optional rather than required. Those PHAs with ceiling rents in effect at the time flat rents went into effect (October 1, 1999) were permitted to use the ceiling rents as a substitute for flat rents until September 30, 2002. The PHA policies on the use of ceiling rents were required to be established in writing in the ACOP. The institution of flat rents (under QHwRA) has likely changed the usefulness of ceiling rents.

Some general principles concerning ceiling rents include:

- Ceiling rents could be assigned by property or agency-wide for units of certain bedroom sizes;
- PHAs that had ceiling rents in effect on October 1, 1999 were allowed to continue these rents until September 30, 2002. After that time period, PHAs were required to adjust these ceiling rents to the level of flat rents. PHAs may continue to impose a ceiling on tenant rents as an income-based rent option, but again, these rents must be at the level of flat rents;^c
- PHAs with ceiling rents may discontinue them at any time after providing notice to residents;
- Ceiling rents could have been based on:
 - Section 8 Fair Market Rents;



- Comparable non-assisted rental units in the community (established by doing a survey). This should be equivalent to a flat rent, plus utilities; and
- Seventy (70) percent of the cost of any remaining debt service (which will vary by development) and the operating expenses associated with the unit expressed as The Average Monthly Amount (TAMA) for family developments and 100 percent of this cost for elderly or mixed population developments.
- With ceiling rents, utility allowances were retained;
- Ceiling rents were reinstated because they fostered upward mobility and income mixing. Increases in income did not affect the family since the rent was capped;
- Ceiling rents are typically “internal” to the PHA, since, absent any market survey, they do not include factors such as location and amenities, which are always considered when apartment rents are established in the private market; and
- Once the PHA has established flat rents, ceiling rents should be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities).

At this point the function of the ceiling rent is to assist flat rent families whose incomes are reduced, causing the families to be placed on income-based rents. If their incomes increase before the annual reexamination date, the families cannot be placed back on flat rents until the reexamination, but if the PHA has ceiling rents, the family can be placed on a ceiling rent (of exactly the same amount as the flat rent) until the annual reexamination.

10.6 Flat Rents

Overview

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. In other words, flat rent is the unsubsidized amount any landlord could charge and lease the unit promptly after preparation for occupancy.

Setting Flat Rents Properly (24 CFR § 960.253(b))

To calculate a flat rent, PHAs are required to take into consideration the following for each property:

- Location (this will include the value and quality of neighboring housing);
- Quality (need for rehabilitation);
- Unit size (both number of bedrooms and square footage);



- Unit type (Generally single family units are valued the highest, with semi-detached and town homes next, then walk-up or garden-type apartments. Elevator buildings are usually considered a negative for family housing, although that is not necessarily the case in mixed population housing.);
- Age of property;
- Amenities at the property and in immediate neighborhood (e.g. laundry facilities, child care, recreation room, play areas, open space, parking, public transportation, schools, shopping, etc.);
- Housing services provided;
- Maintenance provided by the PHA; and
- Utilities provided by the PHA.

The above list looks familiar because it is identical to the criteria used to determine rent reasonableness in the Housing Choice Voucher Program. Under that program, PHA's are required to "...determine whether the rent to owner is a reasonable rent in comparison to other comparable unassisted units" (24 CFR § 982.507 (b)). To make the rent reasonableness determination, the PHA must consider the same factors as those listed for the flat rents.

- PHAs may use rent reasonableness data to establish flat rents for their units if they have Section 8 units located in the same neighborhoods as their public housing properties and they adjust for differences between the units.
- PHAs might also choose to have the rents established through other forms of market analysis using census data, surveys, and the expertise of market analysts or appraisers.
- Documentation on the method used to determine flat rents must be retained by the PHA.
- Flat rents that are appropriately set can help rent an otherwise hard to rent property.
- There is no utility allowance or reimbursement with flat rents. Instead, the PHA takes the utility payment into consideration in setting the flat rents. In two otherwise identical properties, the flat rent would be higher for the property with PHA supplied utilities and lower for the property with tenant-paid utilities.

Rent Choice (24 CFR § 960.253)

Once each year, the PHA must offer families the choice between a flat rent or an income-based rent. The PHA must provide sufficient information for families to make an informed choice. This information must include the PHA's policy (stated in its Admissions and Continued Occupancy Policy, ACOP) on switching due to financial hardship and the dollar amount of the rent under each option.

**Reexamination (24 CFR § 960.253)**

If a family chooses a flat rent, the PHA is required to conduct a reexamination (updates) of income at least once every three years, although the PHA may opt to do so more often.

- PHAs must conduct annual reexaminations of family composition, community service, self-sufficiency, and other criteria related to continued occupancy.^{ci}
- PHAs are required to provide an income-based rent amount only in the year that a reexamination is conducted or if the family specifically requests it and submits updated income information.

Switching from Flat Rent to Income-Based Rent Because of Hardship (24 CFR § 960.253)

At any time families experiencing financial hardship and unable to pay flat rents because their situations have changed can opt to switch to an income-based rent.

- The PHA must adopt written policies on switching from one type of rent to another.
- If the PHA determines that a financial hardship exists, the PHA must immediately allow the requested switch.
- The time period for the PHA to determine that a hardship exists should be spelled out in the ACOP.
- PHA policies on hardship must include, but are not limited to, the following changes in circumstance:
 - Decreases in income
 - Loss or reduction of employment
 - Death in the family
 - Reduction or loss of earnings or other assistance
 - Increase in expenses including
 - Medical costs
 - Childcare
 - Transportation
 - Education
- Other situations determined by the PHA (Many PHAs are permitting families to switch whenever the income-based rent would be lower than the flat rent, on the theory that they would rather not lose the family.)

Annual Review of Flat Rents (24 CFR § 960.253)

PHAs should review their flat rents as often as necessary, but at least annually, to ensure that flat rents continue to mirror market rent values. In some PHA neighborhoods, where private disinvestments are



occurring, this could result in a reduction of flat rents. Conversely, if public and private investment were increasing rental values near a public housing property, flat rents would rise.

Residents paying flat rents would not have their flat rents adjusted (up or down) until their annual reexamination or annual update.

10.7 Relationship Between Rents and Utility Allowances

Utility allowances are provided to families paying income-based or ceiling rents when the cost of utilities is not included in the rent. Utility Allowances should not be confused with excess utility charges. (See Chapter 14 for a discussion of utilities.)

- Utilities include gas, electricity, fuel for heating, water, sewerage and solid waste disposal for an assisted unit. In addition, if the PHA does not furnish a range and refrigerator, the resident must be granted a utility allowance for the range and refrigerator they provide.
- Telephone and cable television are not considered utilities.
- The amount of the utility allowance is equal to the estimate of the monthly cost of the reasonable consumption of utilities and other services for the unit by an energy-conservative household of modest circumstances.
- Utility allowance amounts will vary by the rates in effect, size and type of unit (single family, duplex, row, town home), climatic location and siting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage.
- The allowance amount must be sufficient to maintain the requirements of a safe, sanitary and healthful living environment.^{cii} Existing technical standards (i.e., local building codes) should be used where available in determining what is necessary to provide for safe, sanitary and healthful living.



10.8 Utility Reimbursement

The amount, if any, by which the utility allowance for a unit exceeds the total tenant payment for the family occupying the unit must be provided as a utility reimbursement, either directly to the family or to the utility supplier on the family's behalf each month.^{ciii} (This definition is not used in the Housing Choice Voucher Program, or for a public housing family that is paying a flat rent.)

Example 1: No Reimbursement		Example 2: Utility Reimbursement	
Total Tenant Payment =	\$120	Total Tenant Payment =	\$ 120
Minus Utility Allowance =	\$ 75	Minus Utility Allowance =	\$ 130
Rent paid to the PHA =	\$ 45	Utility Reimbursement =	\$ 10

10.9 Earned Income Disallowance (EID)

Overview

The earned income disallowance, established by QHWR, encourages resident self-sufficiency by rewarding certain residents who go to work or have increased earnings. The earned income disallowance is applicable to an adult resident who either begins earning income or earns additional income. The disallowance functions as an income exclusion – that is, certain amounts of qualifying adults' verified income are not counted toward rent for a specified period. For a qualified resident, increases in income due to earnings are completely excluded in calculating rent for 12 months, after which, half the increased earnings are excluded for the following 12 months. The exclusion period can be interrupted, but in no case may the total number of months between the beginning of the exclusion and the final month of exclusion exceed 48 months. Thereafter, applicants cannot receive the earned income disallowance, including for purposes of admission, rent and income targeting.

Note: An updated EID Frequently Asked Questions (FAQ) is available at HUD's Public and Indian Housing web site at www.hud.gov/pih. Also available, for your benefit, is an EID calculator in Excel spreadsheet format and instructions along with an EID Exclusion Period Tracking Form.

Terminology

Earned income exclusion, earned income disregard and earned income disallowance all mean the same thing: income that the individual receives that is not counted as part of their annual income for rent computation. Former income is the amount of the family member's income just prior to the earned



income disallowance being triggered, e.g., the last certified income. It is this former income that establishes the **baseline** amount to be used in determining the amount to be excluded. The baseline for that family member will never change throughout the course of the earned income disallowance.

Qualifying for a Disallowance

The earned income disallowance is only available for households under lease. It is not applicable at admission. Only adults can qualify for the earned income disallowance (because the earnings of family members other than the head or spouse are excluded if the family member is under age 18). Each person can receive only one 48-month disallowance period during his or her lifetime. There are three categories of individuals who qualify for the earned income disallowance:

- **A person whose annual income increases because of employment after having been unemployed for at least 12 months.** A person is considered to have been unemployed if he or she has earned less money in the previous 12 months than would have been earned working 10 hours per week for 50 weeks at the established minimum wage. (The minimum wage to be used is that applicable to the locality in which the determination is made.) The majority of families who qualify for earned income disallowances are likely to do so under this category.

Note: An individual who was unemployed for some period of time before becoming a public housing resident or who earned so little in the previous period to be considered unemployed could qualify under this category, so long as there is a 12 month period of unemployment.

- **A person whose annual income increases because of new or increased earnings during participation in an economic self-sufficiency or other job-training program.** This requirement is not the same as the previous income disregard. The key concept in this eligibility category is that the individual receives the new or additional earned income while he or she is involved in economic self-sufficiency or job training, not after the completion of such training.

Note: An example of this category of qualification occurs when people are studying for a variety of medical professions. Typically, classroom work is followed by a 'practicum' in a doctor's office, hospital or clinic, during which the individual is paid.

- **A person whose annual income increases because of new or increased earnings,** during or within six months after receiving assistance, benefits or services from a program funded by any state program for Temporary Assistance to Needy Families funded under Part A of Title VI of the Social Security



Act.³⁷ The assistance is not limited to income maintenance, but also includes benefits and services such as child care and transportation subsidies and one-time payments, wage subsidies and other amounts and services as long as the value of such benefits or services over a six month period is at least \$500. This is the only eligibility category that relates to the type of income received before the earned income. Only persons who have received either cash grants (of any amount) or at least \$500 worth of benefits or services from a qualified welfare program in the past six months qualify under this category. Note, also that persons who are already employed but who receive increases in income may qualify under this category if they have received welfare income or services in the previous six months.

Example: A former welfare recipient who is still receiving subsidized childcare from the welfare agency is working in a fast food restaurant. The quality of her work and her attendance and attitude bring her to the attention of the restaurant's management who nominates her for the 'management track.'

She is selected, trained, and receives a substantial increase in her hourly rate. Because she is receiving childcare subsidy from the welfare agency worth \$300 per month, the increase in her earnings will qualify her for the earned income disallowance.

Note: Receipt of Medicaid or food stamps does not qualify under this category, although there are a wide range of services and programs that do qualify. A PHA should check with the agency that administers welfare programs to determine the source of funding.

Disallowance Amounts (24 CFR § 960.255 (b))

In the first 12 months, the amount excluded from the qualified family's household income is the amount by which the new income of the family member whose earned income increases exceeds the family member's former income.³⁸

If a resident has taken a job that pays only slightly more than the resident's previous income, the disallowance amount would be very small. On the other hand, if a resident's child were taking her first job after finishing college, she might qualify for the disallowance of the entire amount of her earnings, since she might very well have had no income prior to her new employment. Below is the method of calculation for determining the earned income disallowance. The spreadsheet below has been automated in Excel software format and can be accessed at HUD's PIH web site. The method illustrated on the following page has the effect of applying the disallowance that results when a family member goes to work, without impacting the TTP, because that event has occurred. Moreover, in calculating the

³⁷ As determined by the PHA in consultation with the local agencies administering Temporary Assistance to Needy Families (TANF) and welfare to work programs.

³⁸ In determining "former income", the PHA is permitted to use the last certified income of the family member.



disallowance, the amount disallowed can never be greater than the total earned income of the family member.

Source Of Income	BASLINE LAST CERTIFIED INCOME) (B)	NEW TOTAL ANNUAL INCOME FOR THIS FAMILY MEMBER ONLY (C)	ANNUAL DISALLOWANCE C-B (D)	OTHER INCOME EXCLUSIONS (E)	INCOME AFTER EXCLUSIONS C-1 -E (F)
TANF	6,000	6,000			
Child Support	3,000	2,400			
Wages	0.0	10,000			
Other income					
Total	9,000	18,400	9,400	0.0	9,000

After the first exclusion period (12 months), the disallowance amount is fifty percent of the increase in earned income of the family member over the baseline of that family member. Thus, if a resident received a raise during the first 12 months of working, or changed to a job that paid more than the initial job, the amount disallowed during the first 12 months is the entire amount by which earnings exceed the baseline income. At the end of the first 12 months, the disallowance amount would be based on fifty percent of the increased earned income.

Disallowance Periods (24 CFR § 960.255 (b))

Every resident that qualifies for a disallowance receives two different disallowance periods: 12 cumulative months of full disallowance and 12 cumulative months of fifty percent disallowance, or phase-in exclusion. For the 12 cumulative months starting when the disallowance begins, the full exclusion period is in effect and the amount disallowed is the difference between the resident's baseline income and the new annual income due to earned income. After the first 12 month exclusion period, the disallowance continues in effect for an additional 12 months, but the amount of the disallowance is reduced by fifty percent.

Note: The disallowance amount computation is specific to the individual resident and not to the entire family. If a family consisted of a head of household who was receiving welfare income, and her



children, one of whom is finishing high school and turning 18, the disallowance for the head would be the earnings less the welfare income (3rd EID category). For the 18 year old, however, the disallowance would be the entire amount earned because this family member had no income previously (1st EID category).

Maximum Disallowance Period

One aspect of the earned income disallowance that makes the program particularly useful to families moving from welfare to work is that the disallowance periods are only in effect when the family is actually earning income. The disallowance period is suspended if the resident is laid off or stops work for some other reason. Eligibility for the disallowance can be spread over a maximum of 48 months.

Many residents find the road from welfare to work very bumpy and cycle in and out of work. Residents should be counseled to report to the PHA when they stop working and when they start working again, so the PHA can keep track of exactly how many months are remaining for their disallowance period.

Note: One effect of the earned income disallowance is to eliminate some situations in which the PHA would otherwise be making retroactive charges to residents. For example, if a resident gets a job and does not report in a timely manner, the resident might be subject to a retroactive charge of the difference between the amount he paid and the amount his rent should have been. If the resident qualified for a disallowance, however, when the PHA finds out about the job, the resident would be deemed to have already received the number of months of disallowance from the point when he would have qualified for the disallowance. In other words, the disallowance does not start when the PHA discovers the additional earned income or when the resident gets around to reporting it – the disallowance starts when the additional employment income starts.

While this program detail is of benefit to families, it makes the program more difficult for PHAs to administer correctly. PHAs must track each resident's disallowance periods carefully, both to ensure that every resident gets the 12 months of full disallowance and 12 months of fifty percent disallowance to which they are entitled and to avoid granting any resident a disallowance that extends beyond the 48 month maximum.



Earned Income Disallowance Example

- Sandra Marshall was unemployed for 25 months ending May 30, 2000.
- Her TANF income was \$540 per month.
- She received a position on the assembly line at the local automobile plant, earning \$1100 per month starting work on June 1, 2000 and reported to the PHA immediately. The PHA noted that her maximum disallowance period would expire on May 31, 2004.
- The amount of her disallowance was \$560 per month (\$1,100 in new earnings - \$540 in TANF) beginning June 1, 2000.
- Sandra's rent continued to be based on her previous TANF income of \$540 per month
- Sandra was laid off effective September 1, 2000 and reported to the PHA immediately.
- The PHA noted that Sandra still has 9 months of full disallowance left and 12 months of 50% disallowance left.
- Sandra went back on TANF at \$540 per month from September 1, 2000 until January 1, 2001, when she was called back to work at the plant at her previous \$1,100 per month salary. Sandra reported to the PHA immediately.
- In the ninth month of her first year, Sandra receives a raise to \$1,200 per month. This does not affect her disallowance during the first 12 months.
- Sandra's rent was based on \$540 until August 31, 2001 (which completed the 9 months of full disallowance that were remaining).
- After 12 months, her disallowance was reduced to \$330 per month (50% of her new earned income of \$1,200 less her original TANF income of \$540).
- Effective September 1, 2001, Sandra's rent was increased because she was now in the beginning of her 12 months of 50% disallowance. Her rent will now be based on \$870 per month (\$540 of base income plus \$330, 50% of the new earned income amount)
- Sandra is not laid off again and continues to work at the plant.
- On August 31, 2002 Sandra completes the 12 months of 50% disallowance.
- Beginning September 1, 2002 Sandra's rent is based on her full income of \$1,200 per month.



Imputed Welfare Income and Earned Income Disallowance

Occasionally an individual who is under an imputed welfare income sanction will go to work and qualify for an earned income disallowance. In this instance, the base rent, before the disallowance, includes the imputed welfare income. See Chapter 13 for further discussion of imputed welfare income.

Individual Savings Account (24 CFR § 960.255 (d))

PHAs have the choice to implement Individual Savings Accounts (ISAs) as an alternative to the earned income disallowance. While there are some ways in which the ISA is similar to an escrow account under the Family Self-Sufficiency (FSS) program, there are also some significant differences. Even if a PHA opts to implement ISAs, the family has a choice of either depositing to an ISA or taking the earned income disallowance. The PHA may not require families to use ISAs.

The amount to be deposited into the ISA is computed in the same manner as an FSS escrow account, that is, the difference between the family's original rent and what the rent would be if the new earned income were included. In the Sandra Marshall example above, Sandra's ISA deposit would be the difference between her rent based on her former \$540 per month welfare income and the rent based on the \$1,100 per month automobile plant job.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home;
- To pay education costs of family members;
- Because the family is moving out of public or other assisted housing; or
- To pay any other expenses the PHA authorizes to promote economic self-sufficiency.

The PHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The PHA may not charge the family a fee for maintaining the account.

At least once each year the PHA must provide each family with an ISA a statement of the balance in their account (including any interest earned, if required by state law).

If the family moves out of public housing, the PHA must return the balance in the family's ISA, less any amounts the family owes the PHA.



PART 4: CONTINUED OCCUPANCY OF PUBLIC HOUSING



Chapter 11. Transfers

11.0 Overview

Every PHA encounters situations in which it is necessary to move residents from one unit to another. The PHA's Admissions and Continued Occupancy Policy should provide policy for the staff that makes clear:

- The types of transfers recognized by the PHA;
- The priority among types of transfers;
- When transfers take precedence over waiting list admissions;
- Which transfers are mandatory and which are optional;
- Whether the PHA makes "split family" transfers;
- Eligibility requirements for transfers;
- When the costs of transfers are borne by the PHA and when the resident pays transfer costs; and
- Whether transfers will be processed centrally (by the Admissions office) or at the sites.

11.1 Types of Transfers

Most PHAs recognize several types of transfers. Some types of transfers are considered mandatory by HUD, while others are optional. Further discussion of mandatory versus optional transfers is found in Section 11.5. The most common types of transfers are described below:

- **Emergency:** Conditions in the resident's unit, building or at the site pose an immediate, verifiable threat to the life, health or safety of the resident or family members. Examples of such unit or building conditions would include for example: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks. For the PHA to remain compliant with its lease obligations, any condition that would produce an emergency work order, as defined under the Public Housing Assessment System (PHAS) Management Assessment Subsystem indicator, would qualify a resident for an emergency transfer if the PHA were unable to make repairs in less than 24 hours.^{clv}

In addition, a PHA may allow for an emergency transfer to alleviate a verified medical condition of a life-threatening nature or, based on a threat assessment by a law enforcement professional, to protect members of the household from attack by criminal elements at the property or neighborhood, or for a domestic violence victim (See Chapter 19).



- **Reasonable Accommodation:** These transfers are made when a resident needs to move to a different unit as an accommodation to a resident's disability. This kind of transfer may be requested for a variety of reasons, including, but not limited to: the resident needs to be moved to a ground floor unit because his disability prevents him from climbing stairs; the resident needs a unit with certain physical features and they cannot be provided in his current unit without undue financial and administrative burden to the PHA.
- **Demolition, Disposition, Revitalization or Rehabilitation:** These transfers permit the PHA to demolish, sell or do major revitalization or rehabilitation work at a building or site.^{cv}
- **Occupancy Standards:** These transfers are made when resident's family size has changed and the resident's family is now too large or too small for the unit occupied. PHAs are required to make these transfers.^{cvi}
- **Split Family Transfers:** Not all PHAs make these transfers, which permit very large families that have two adults to split into two households and be transferred to two units. A split family transfer is a type of Occupancy Standards transfer.^{cvi}
- **Incentive:** These transfers to new or rehabilitated units can be made for residents with excellent residency histories. These transfers are not required.
- **Resident-initiated:** A resident requests a unit transfer that is not out of necessity. PHAs may establish a policy to exclude such transfers from its policy.

11.2 Priorities Among Types of Transfers

Transfers are prioritized according to standards established by the lease. Emergency transfers are of the highest priority because failure to make them puts the PHA in violation of its responsibilities under the lease. Many PHAs establish multiple categories of transfers into categories to make priorities clear and manageable. The following list is an example of how transfers could be prioritized: emergency, reasonable accommodation, demolition/disposition/revitalization/rehabilitation, occupancy standards, split family, incentive, and resident initiated. Also see the transfer policy in the sample ACOP in Appendix III.

11.3 When Transfers Take Precedence Over Waiting List Admissions

Generally emergencies, reasonable accommodations, demolition/disposition/revitalization/rehabilitation, incentive and occupancy standards transfers take precedence over waiting list admissions. The PHA's list of transfers that take priority over admissions should be listed in the Admissions Continued and Occupancy Policy of the PHA.



11.4 Mandatory and Optional Transfers

Emergency, demolition/disposition/revitalization/ rehabilitation and occupancy standards transfers are mandatory for the resident. In some cases, mandatory transfers are used to protect residents during lead hazard reduction activities.^{cviii} Reasonable accommodation, incentive, lower priority occupancy standards and resident-initiated transfers are optional for the resident³⁹.

The PHA must ensure that its lease makes clear that certain types of transfers are mandatory.^{cix} Residents who wish to dispute mandatory transfers are expressly permitted to use the PHA's grievance procedure.

The PHA ACOP should describe the number of unit transfer offers a resident will be given. Residents are entitled to reject transfer offers for the "good cause" reasons listed in the ACOP.

When the PHA conducts lead hazard reduction activities in a unit, it must protect residents and their belongings.^{cx} It must prevent residents from entering the worksite until after hazard reduction work is complete and clearance is achieved. In some cases, residents may have to be temporarily relocated before the hazard reductions starts to a suitable unit that is free of lead-based paint hazards.^{cx}

11.5 Split Family Transfers

A PHA's ACOP describes the requirements for qualification for a split family transfer if the PHA opts to grant such a transfer. The ACOP would include the following requirements, for example:

- The persons who would be the family heads (original head and new head) must (A lease shall be entered into between the PHA and each tenant of a dwelling unit.) both be listed on the most recent lease and recertification (which prohibits individuals from extending their "visits" to the family to obtain a unit);^{cxii}
- The family must be overcrowded according to the PHA's occupancy standards;^{cxiii}
- Both heads must be legally capable of executing a lease; and
- The reason for the family split must be the addition of children through birth, adoption or court-awarded custody.^{cxiv}

³⁹ Residents with disabilities are not compelled to accept transfer offers related to reasonable accommodations.



11.6 Eligibility for Transfers

PHAs are permitted to establish requirements for transfers that residents are seeking (incentive transfers or moving overcrowded families to larger units), but they shall not impose such requirements in emergency situations. Further, PHAs usually waive the requirements when the transfers are necessary but unpopular with residents (e.g., moving empty-nesters to smaller units). For example, some PHAs require that residents who are transferring:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff;
- Owe no back rent or other charges, or have a pattern of late payment;
- Have no housekeeping lease violations or history of damaging property; and
- Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities).

11.7 Cost of Transfers

PHAs must bear the reasonable costs of transfers they initiate (demolition, disposition, revitalization or rehabilitation), transfers required because the PHA lease obligations are not being met (building system failures, other emergency conditions the PHA is unable to repair within 24 hours), as well as the cost of all transfers needed as a reasonable accommodation for residents with disabilities. Residents typically must bear the costs associated with occupancy transfers (although some PHAs pay for moving residents to smaller units, since this is so rarely desired by residents), incentive transfers, and all resident-initiated transfers.

The reasonable cost of transfers includes not just the cost of packing, moving, and unloading, but also the cost of disconnecting and reconnecting any existing resident-paid services such as telephone and cable television.

11.8 Processing Transfers

PHAs with few developments may be able to process transfers at the sites, but larger PHAs will usually need to maintain a central transfer waiting list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties. Further, since some transfers have a higher priority than admissions, coordination with the PHA's Occupancy function is essential. The ACOP should describe the PHA's approach to processing transfers.



It is not reasonable to expect that all transfers could be handled within one site at a large PHA, since in an emergency situation, the site with a resident needing to be transferred might not have a vacant unit. In addition PHAs subject to deconcentration requirements, may use transfers as a tool to achieve income deconcentration. Such transfers will, by definition, be across properties.

11.9 Sample Transfer Policy

A sample transfer policy is contained in the sample ACOP in Appendix III.



Chapter 12. Annual Reexamination of Income and Family Circumstances

12.0 Overview

After a family is admitted to public housing, they must comply with HUD's and the PHA's rules on continued occupancy (as expressed in the PHA's lease) to remain as tenants in good standing.^{cxv} The Admission and Continued Occupancy Policy as well as the lease should clearly state the criteria that would qualify a resident for continued occupancy. This chapter provides guidance on the criteria for continued occupancy of public housing residents.

12.1 Qualification for Continued Occupancy

Residents who meet the following criteria are eligible for continued occupancy:

- **Qualify as a family:** Remaining family members qualify as a family so long as at least one of them is of legal age to execute a lease. Remaining family members can also include court recognized emancipated minors under the age of 18.
- **Are in full compliance with the resident obligations as described in the dwelling lease:** Except for failing to comply with Community Service requirements (described in Chapter 15), public housing authorities cannot refuse to renew their residents' leases. Leases can only be terminated for serious or repeated violation of the material terms of the lease.
- **Whose family members, age 6 and older, each have Social Security numbers or have certifications on file indicating they have no Social Security number:** At the annual reexamination residents should document the social security numbers of children born, adopted or placed in the family by Court-awarded custody since the admission or the previous reexamination.
- **Who meet HUD standards on citizenship or immigration status or are paying a pro-rated rent (24 CFR § 5.500).** As with Social Security numbers, residents would document the citizenship or eligible immigrant status of children born, adopted, or placed in the family by Court-awarded custody since admission or previous reexamination.



- Who are in compliance with the PHA's 8 hour per month community service requirements. This requirement is applicable to certain adults who are neither elderly, person with a disability, already working or otherwise exempt. (See Chapter 15).

12.2 Annual Reexamination

At least annually, the resident is required to provide the PHA with accurate and current information on the following, as stipulated in the lease (24 CFR § 966.4):

- Family composition;
- Age of family members;
- Annual income and sources of income of all family members;⁴⁰
- Deductions for computing adjusted income;
- Assets;
- Community Service and economic self-sufficiency activities and exempt status of all family members over age 18;
- Social security numbers for any new family members; and
- Citizenship or eligible immigrant status of any new family members.

To ensure uniformity and compliance with HUD regulations and Civil Rights Laws, PHAs must establish reexamination procedures to be followed by Occupancy Staff that reflect their Admission and Continued Occupancy Policy.^{cxvi} It is not possible to perform an adequate reexamination without interviewing the family. The following procedures are essential to the reexamination process:

- Many PHAs require adult members of the household to sign an application for continued occupancy and other forms required by HUD.⁴¹
- Employment, income, allowances, Social Security numbers, and such other data appropriate for the family's circumstances must be verified,^{cxvii} and all verified findings must be documented and filed in the resident's folder.^{cxviii} A credit check may be run on each family at the time of reexamination to help detect any unreported income, family members not reported on the lease, etc. (24 CFR § 960.259).
- Verified information is to be analyzed and a determination must be made with respect to:
 - Eligibility of the resident as a family or as the remaining member of a family;

⁴⁰ The exception is PHAs may require that families paying Flat Rent need only provide income information every three years.

⁴¹ In certain states it is possible to bring legal action against anyone who signs a lease. In other states only the head of household may be subject to lease enforcement.



- Unit size required for the family (using the Occupancy standard established by PHA in the ACOP); and
- Income-based rent the family would pay (although all residents will be given the choice of paying income-based or flat rent).
- Residents with a history of employment whose regular reexamination takes place at a time when they are not employed must have their income calculated based on their past and anticipated employment. Residents with seasonal or part-time employment of a cyclical nature must be asked for third party documentation of the circumstances of their employment including starting and ending dates.
- Income shall be computed in accordance with the definitions and procedures set forth in HUD regulations (24 CFR Part 5).
- Families failing to respond to the initial reexamination appointment are usually issued a final appointment within the same month. If the family fails to respond to the final request they will be sent a notice of lease violation and referred to the Housing Manager for failure to comply with the terms and conditions of the lease. Failure to comply must result in termination of the lease (24 CFR § 966.4 (c)(2)).
- Third party verifications must be obtained and documented for annual income, net family assets, deductions from annual income and any other factor that could affect the adjusted income or income based rent of the family undergoing reexamination. The PHA must also document if third party verifications are not available.
- Criminal Background checks may be conducted for all household members age 18 and over.⁴²

Chapter 7 of this Guidebook provides further guidance on verifications standards.

Reexamination of Income (24 CFR § 960.257)

PHAs are required to reexamine the incomes of all residents who have chosen to pay income-based rent at least annually⁴³ after which, if appropriate, their rents will be adjusted.

To facilitate the reexamination process, a PHA must provide each resident reasonable written notice of what actions the resident must take and the timeframe for those actions, before the process starts.^{cxix} This stipulation should be included in the PHA's lease.

⁴² Increasing numbers of PHAs are conducting criminal history checks at annual reexaminations, although this is not a HUD requirement.

⁴³ Many PHAs set certain categories of residents up on more frequent reexamination schedules. Examples of families to whom this might apply would include families who report zero income, or those whose incomes are too unstable to determine for twelve months.



The annual reexamination of income is equivalent to that at admission: the PHA must obtain acceptable verifications (see Chapter 7) of every type of income included in Annual Income (see Chapter 10) received by each family member. Then, if income has changed, rent will be recomputed. State laws require differing amounts of notice of rent increases, so the PHA must begin the reexamination process early enough to complete verifications and provide the requisite amount of notice that will permit rent to be adjusted at the beginning of the next twelve month lease term. Most PHAs begin the reexamination process one hundred twenty to ninety days before lease expiration.

PHAs are permitted to reexamine the incomes of residents who have opted to pay flat rent as infrequently as every three years.

Reexamination of Family Composition

PHAs are required to reexamine the family composition of both families paying income-based rent and flat rent annually. The purpose of this reexamination is to ensure that the size and type of unit in which the family is living is appropriate for the family's size and needs. Unless the family has requested an interim occupancy transfer, the annual reexamination is the point at which the PHA makes determination about a resident's eligibility or requirement to transfer.⁴⁴ As with rent adjustments, the lease stipulates the amount of notice required for transfers, so PHAs should schedule reexaminations far enough in advance that transfers can be effectuated concurrent with the execution of new annual leases. Transfers are covered in more detail in Section 12.7.

Verification requirements related to family composition (see Chapter 7) must be followed for all new family members added to a tenant's lease at reexamination.^{exx}

PHAs are required to add to the lease and certification form children added to the household by birth, adoption or Court-awarded custody. If the PHA's lease requires residents to report the addition of such children when they actually join the household, the verification requirements may already be complete at the annual reexamination.

The PHA's lease describes its policies with respect to adding adults to the lease. Generally, PHAs should not add adults to a lease unless the PHA has screened them (using the PHA's standard applicant selection criteria) and given the tenant written permission to add the adults.

⁴⁴ Some PHA's leases and ACOPs provide that occupancy transfers will only take place at annual reexaminations.



Choice of Rent

During the reexamination process, the PHA must give each resident the choice between income-based or flat rent.^{exxi} The annual reexamination is the only time a resident can change from income-based to flat rent. Chapter 10 of this guidebook further describes the different types of Program Rents.

Community Service/Economic Self-Sufficiency Requirement

The Quality Housing and Work Responsibility Act of 1998 introduced the Community Service and Economic Self-Sufficiency requirement, under which each PHA must adequately document whether its non-exempt residents are complying with their community service or economic self-sufficiency responsibilities.^{exxii} This requirement relates directly to lease renewal, because the PHA is not permitted to renew the lease at the end of the twelve (12) month period if non-exempt family members fail to comply with the service requirement. The Community Service and Economic Self-Sufficiency requirement is discussed in Chapter 15.

12.3 Remaining Family Members and Prior Debt

If the head of household dies or leaves the dwelling unit permanently for any reason, the remaining family members may continue to occupy the unit if there is at least one household member (not a live-in aide) of legal age and capacity to execute the lease living in the household. A new lease must be signed to correct the family's composition in the tenant file.^{exxiii}

A PHA may permit an adult not on the lease, to be a new head of household after the death or departure of the original head of household. This would usually occur when the only family members remaining in the unit are children, who otherwise would have to leave the unit. The PHA should consider whether there are any remaining family members capable of executing a lease before permitting a new head of household in the unit.

In either case, the new head of household would be charged for any outstanding debt incurred by the former head or spouse. The PHA may establish a payment plan with the new head of household, especially in the case where there could be an eviction due to delinquent amounts incurred by the former head.

A PHA shall not hold remaining family members under age 18 responsible for the rent arrearages incurred by the former head of household, nor for any amounts incurred before a new head of household attained age 18.



12.4 Change in Reexamination Date

If a family begins working and their incremental earned income is excluded in accordance with HUD requirements on the Earned Income Disallowance, the date for their next regular reexamination may be permanently adjusted to be 12 months following the date that the income disallowance began.

12.5 Zero Income Families

When families report zero income, and have no income excluded for rent computation, PHAs have an obligation to pursue verification of income that reflects the family's lifestyle. One method is to examine the family's circumstances every 60 to 90 days until they have a stable income. It is recommended that PHAs request zero income families to complete a zero income form (see Appendix VIII). The form asks residents to estimate how much they spend on: telephone, cable TV, food, clothing, transportation, health care, child care, debts, household items, etc. and whether any of these costs are being paid by an individual outside the family. If any such payments are received they are to be considered income.

12.6 Special Reexaminations

If the PHA cannot estimate anticipated annual income based on the available information with any degree of accuracy at the time of admission or regular reexamination, a temporary determination will be made with respect to income and a special reexamination can be scheduled every 60 or 120 days (as stated in the PHA's ACOP) until a reasonably accurate estimate of income can be made. The resident must be notified in advance of the date for the special reexamination(s). Special reexaminations shall also be conducted when there is a change in the head of household that requires a remaining family member to take on the responsibilities of a leaseholder.

12.7 Determination of Need for Transfer

If the reexamination conducted by the PHA determines that any change in the unit size or unit type is required, the resident must be placed on a transfer list in accordance with the PHA's transfer criteria specified in the Admission and Continued Occupancy Policy and moved to an appropriate unit that conforms with the size and design required by the family, when one becomes available. (24 CFR § 966.4 (c)(3)). The transfer must be in accordance with the transfer criteria.

After discussing with the resident the need for the transfer during the reexamination process, the PHA shall provide the resident, upon request, with a written notice indicating the reasons for the determination of transfer, the resident's right to request a hearing under the grievance procedure, and the approximate date, if known, for the move.



Involuntary transfers are considered adverse actions and, as such, are subject to the PHA's Grievance Procedures. The transfer cannot be processed until the time to request a grievance hearing has expired or the procedure has been completed. (See Chapter 11 for further discussion of Transfers.)



Chapter 13. Interim Rent Adjustments

13.0 Overview

Interim rent adjustments are made as a result of changes in family income or changes in family composition between annual reexaminations. Housing Authorities are required to decrease rent in certain instances (described below), but they have options regarding changes or activities that will trigger interim rent increases. The options an authority chooses must be detailed in its Admissions and Continued Occupancy Policy (ACOP) and outlined in its annual PHA Plan.

13.1 Required Interim Rent Reductions

There are several instances in which a reduction in a family's income or other change in their circumstances might require a PHA to make an interim reduction in their rent, as described below.

Minimum Rent Hardship Exemption

If a PHA has adopted a minimum rent greater than \$0 per month, and a resident is paying the minimum rent, there are certain instances in which the PHA is required to suspend the minimum rent (24 CFR § 5.630):

- When the family has lost eligibility for or is awaiting an eligibility determination for a government assistance program;
- When the family would be evicted because it is unable to pay the minimum rent;
- When the income of the family has decreased because of changed circumstances including loss of employment;
- When a death has occurred in the family; and
- Other circumstances determined by the PHA or HUD (currently none are required).

It is necessary that PHAs advise any family who pays the minimum rent of the right to request the exemption. If a family paying minimum rent requests a hardship exemption, the PHA must suspend the minimum rent, effective the following month.^{cxv} The PHA may not evict the family for non-payment of the minimum rent for 90 days following the request for the hardship exemption.

The suspension of minimum rent continues until the PHA determines whether or not the hardship is temporary or long term.



If the hardship is verified to be temporary (less than 90 days), the PHA must reinstate the minimum rent and offer the family a reasonable repayment agreement of the minimum rent that was suspended.^{cxv}

If the hardship is verified to be long-term (lasting more than 90 days), the minimum rent must be suspended until the hardship ceases. The family may not be evicted for failing to pay the minimum rent while the hardship is occurring.^{cxvi}

If a PHA denies a resident the minimum rent hardship exemption, the resident is entitled to file a grievance and the PHA may not require the resident to make an escrow deposit to obtain the grievance hearing.

Decrease in Income of Families Paying Income-Based Rent

If a family is paying income-based rent and experiences a reduction in income pursuant to the PHA's reexamination policies, the family may request an interim reexamination of family income. As a result, the PHA must adjust the family's rent to correspond to the new verified income,^{cxvii} effective the first day of the month following the reported change in circumstances.⁴⁵ The reduction in income might occur because of a job lay-off or cutback in hours worked, or from some sort of reduction in unearned income. Remember that reductions in welfare payments due to welfare fraud or failure to comply with economic self-sufficiency requirements are not eligible for rent reductions (Section 13.5).

Change in Circumstances (Increase in Eligible Deductions) of Families Paying Income-Based Rent

Occasionally families paying income based rent experience a verified change in their circumstances that would qualify them for a reduction in income-based rent even though their incomes have not decreased. These circumstances would increase the family's deductions and thus reduce their adjusted income. Examples include:

- When families gains an additional dependent;
- When a family's child care costs increase with no increase in income;
- When an elderly or disabled family's unreimbursed medical costs increase;
- When a family that was not an elderly or disabled family becomes an elderly or disabled family; and
- When a family's disability expense allowance increases.

⁴⁵ If the reduction in income were reported after the PHA's cut-off date for the following month's rent set-up, this might mean the PHA would charge the resident the former, higher rent, subject to a credit when the circumstances of the reduction were verified.



Hardship of Families Paying Flat Rent (24 CFR § 960.253 (f))

When families who have elected to pay flat rent experience certain hardships they are eligible for a reduction of rent to an income-based rent. PHAs are permitted to adjust a family's rent from flat rent to income-based rent any time the income-based rent would be lower, but they are required to adjust the rent in the following circumstances:

- The family has experienced a verified loss in income because of changed circumstances, including loss of reduction of employment, death in the family, or reduction in or loss of earnings or other assistance.
- The family has experienced a verified increase in expenses because of changed circumstances such as increased medical costs, childcare, transportation, education or similar items.

13.2 Approaches to Interim Rent Increases

Unlike the rules related to interim reductions in rent, PHAs are not required to increase rent between annual reexaminations except when it is determined that the resident misrepresented income or expenses at the annual reexamination. The three main approaches to Interim Rent Adjustments are Fixed Rent System, Variable Rent System, and the Hybrid Rent System. The PHA's approach to interim rent increases must be set forth in writing in the PHA's ACOP and lease.^{cxxviii}

Fixed Rent System

Many housing authorities have discovered that the increase in rental income resulting from processing interim rent increases is less than the cost of processing the changes. In a "Fixed Rent System," increases in family income between reexaminations will not result in a rent increases until the next annual reexamination. This can serve as an incentive for families to improve their economic circumstances.

Examples of income changes and resulting PHA actions are below:

CHANGE	PHA ACTION
(a) Increase in earned income from the employment of a current family member.	PHA will grant earned income disallowance if family member qualifies, or will defer the increase to the next regular reexamination.
(b) Increase in unearned income (e.g., COLA adjustment for social security).	PHA will defer the increase to the next regular reexamination.
(c) Increase in income because a person with income (from any source) is approved by the PHA to join the household.	PHA will defer the increase to the next regular reexamination.



Interim Rent System

Under an “Interim Rent System,” the PHA processes interim increases in the rent for every interim increase in income. All changes in income must be reported to the PHA, within the time period specified in the ACOP.^{xxix} A rent change is processed for each change, even if the increase would only be one dollar per month. Unlike the Fixed Rent System, there are no changes that are delayed until the next annual reexamination. The Interim Rent System can be extremely staff intensive, requiring that staff obtain third-party verifications on many small changes in income as well as processing the change in rent.

Hybrid Rent System

Housing authorities that implement a “Hybrid Rent System” establish a benchmark in the lease and ACOP for the types of increases in income that would result in a change in rent. Examples of benchmarks that PHAs may use in a Hybrid Rent System include:

- Family has income after having reported zero income;
- Increases in income of a specified percentage;
- Increases in income of a specified amount;
- Increases in income resulting from changes in employers or other sources of income;
- Increases in income resulting from someone with income joining the family (with the PHA's permission);
- Increases in income that occur after the PHA has granted an interim decrease in rent; and
- Increases in unearned income resulting something other than from annual Cost of Living Increases.

While the Hybrid Rent System may decrease the number of changes in rent, depending on the types of increases that will trigger a rent change, it can be complex for housing authority staff to determine when to process rent changes resulting from increases in income.

It is recommended that a PHA using the Hybrid Rent System include a detailed description in its ACOP and lease describing the events that trigger the change in rent. For example, if a PHA chooses an increase in income of a specified percentage, the PHA’s ACOP states what that percentage is and how that percentage is computed (i.e., percentage of that source of income or percentage of the total income of the family).



13.3 Effective Date of Adjustments (24 CFR § 966.4 (3)(b))

PHAs shall notify residents in writing of any rent adjustment and when the adjustment is effective. Rent decreases usually go into effect the first of the month following the reported change. Income decreases reported and verified before the tenant accounting cut-off date will be effective the first of the following month. Income decreases reported or verified after the tenant accounting cut-off date will be effective the first of the second month with a credit retroactive to the first month. The PHA may adopt a policy that states that a decrease that is verified to last less than 30 days will not be processed.

Rent **increases** (except those due to misrepresentation) require the same notice as other rent increases (established in state law) and become effective as stated in the lease.

13.4 Timely Reporting of Accurate Information

A PHA must include in its ACOP resident requirements (if any) for reporting changes in income.^{cxxx} Even if the PHA is using the Fixed Rent System, the PHA still may require the resident to report all changes with a set time period of the change occurring. Since the Fixed Rent System does not require that a rent change occur with every increase in rent, the PHA will file the changes in the tenant file, without verification. Verifications will be performed at the time of the next annual reexamination. PHAs may also choose not to require residents to report income increases if it will not change rent until the annual reexamination.

If it is found the resident has misrepresented or failed to report to the PHA the facts upon which his/her rent is based so that the rent being paid is less than what should have been charged, then the increase in rent will be made retroactive. Failure to report accurate information is also grounds for initiating eviction proceedings in accordance with PHA's dwelling lease (24 CFR § 966.4).

The PHA will always process an interim increase in rent if it is found that the resident at an annual or interim reexamination has misrepresented the facts upon which the rent is based so that the rent the resident is paying is less than the rent that he/she should have been charged. PHA will apply any increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.

Failure to report within the timeframe specified in the ACOP and lease may result in a retroactive rent increase, but not a retroactive credit or rent reduction. In order to qualify for rent reductions, residents must report income decreases promptly. Residents may also be required to report interim increases in income if they have been granted interim rent reductions.^{cxxxi}

Complete verification of the circumstances applicable to rent adjustments must be documented.^{cxxxii}



13.5 Imputed Welfare Income (24 CFR § 5.615)

Overview

In 1998, with the passage of QHWRRA, Congress linked welfare reform and housing reform. To give public housing residents and housing choice voucher participants a greater incentive to comply with welfare requirements that participants move toward economic independence, the law established two situations in which PHAs are not permitted to reduce rents, even though resident families have reduced incomes. Instead of reducing rent, the PHA must “impute” welfare income to the family in an amount equal to the reduction in benefits.^{xxxxiii}

Economic Self-Sufficiency Requirements

The imputed income provisions apply only to residents who receive welfare assistance from a government program that requires a family member to participate in an economic self-sufficiency program as a condition for receipt of the assistance. In other words, imputed welfare income rules are not applicable to social security benefits, SSI, or general assistance. In most states, the programs to which the imputed welfare income rules apply are funded under the federal program of Temporary Assistance to Needy Families (TANF), although some state and local programs also have similar economic self-sufficiency requirements.

24 CFR § 5.603 (b) defines economic self-sufficiency program as:

“Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program) or other work activities.”

Also included would be General Equivalency Diploma programs, certain higher education, and work readiness programs. Economic self-sufficiency requirements are generally tailored to each welfare recipient’s situation, so the same programs will not be required for every resident.

When the PHA Must Not Reduce Rent

There are two situations in which a PHA is not permitted to reduce rent, even though the family has experienced a reduction in benefits:



- When welfare benefits are verified to have been reduced because of welfare fraud; or
- When welfare benefits are verified to have been reduced because of noncompliance with economic self-sufficiency requirements.

These are the only situations in which welfare income is imputed.

When the PHA Must Reduce Rent

Any other time a resident's welfare grant is reduced or terminated, the PHA must reduce rent in accordance with the ACOP.^{cxxxiv} Examples include:

- At expiration of lifetime or other time limit on the payment of welfare benefits;
- If a family member cannot find a job, even though he or she has completed all the required economic self-sufficiency requirements;
- Because the family's welfare grant was reduced for noncompliance with some other welfare agency requirement; or
- Because of an earlier inadvertent overpayment.

This is not an all-inclusive list of situations in which welfare benefits might be reduced and a PHA would reduce rent.

Example: States that immediately terminate a welfare grant if a recipient misses an appointment (for any reason) and reinstate the grant only when a subsequent appointment is made and kept.

Verification Standards

Before a PHA can make a determination about whether or not to grant a rent reduction, or, conversely, impute welfare income, the PHA must obtain written verification from the welfare agency of the dollar amount of welfare reduction, the term of the reduction, and the reason for the reduction. With this information, the PHA can make a determination about whether or not to impute welfare income. PHAs are expressly permitted to rely on the welfare agency's verification. If a resident wishes to dispute the welfare agency's allegations about welfare fraud or failure to comply with economic self-sufficiency requirements, the resident must appeal through the welfare program's channels. PHAs are permitted, but not required, to delay imputing welfare income until such appeals are exhausted.



Method for Imputing Welfare Income

After the PHA receives verification that it is appropriate to impute welfare income, the PHA can determine the imputed welfare amount: simply, it is the amount by which the welfare grant has been reduced. The amount of time during which welfare income will be imputed is the term of the welfare benefit reduction. Another way of expressing this concept is to say that the PHA is required to compute rent exactly as if the welfare benefit reduction had not occurred until either the benefit reduction ceases, or the resident obtains some additional type of income.

Offsetting Imputed Welfare Income with Additional Income

If a PHA is imputing welfare income in computing a resident's rent and the resident's income increases for any reason (e.g., earned or unearned income), the new income is not added to the former income (which includes the imputed welfare income). Instead, the new income takes the place of the imputed welfare income. Thus, when a resident with imputed welfare income obtains any additional income, it is not added to the overall income until it exceeds the amount of the welfare sanction amount.

Imputed Welfare Income Example

Provided below is an example of imputed welfare income, and what happens when a resident with imputed welfare income obtains additional income.

Example: Meet Monica Smith. Monica's welfare grant is being reduced because of failure to comply with economic self-sufficiency requirements. The PHA has written verification that Monica's former monthly grant of \$500 is going to be reduced to \$300 per month for six months.

Previous welfare grant	\$500 per month
Amount of welfare benefit reduction	\$200 per month
New welfare income (next six months)	\$300 per month
PHA's imputed welfare income amount (Same as the welfare benefit reduction)	\$200 per month
New monthly income for rent	\$500 per month
(includes \$300 welfare income + \$200 imputed welfare income)	

Even though Monica's actual cash income has been reduced by forty percent, the PHA is required to impute welfare income and use \$500 in computing her rent.

If Monica gets a job to make up for the reduction in her welfare grant it will be applied as follows:

If she earns \$200 per month, her rent will be based on	\$500 per month
(\$300 in welfare, \$200 in earnings, offsetting the imputed welfare income)	
If she earns \$250 per month, her rent will be based on	\$550 per month
(\$300 in welfare, \$250 in earnings, offsetting the imputed welfare income)	
If she earns \$150 per month, her rent will be based on	\$500 per month
(\$300 in welfare, \$150 in earnings, \$50 in imputed welfare income)	



Under no circumstances will a resident who is under an imputed welfare income sanction pay less rent than the share of rent based on the former welfare income.

Imputed Welfare Income and Earned Income Disallowance

Occasionally a resident who is having welfare income imputed will go to work and qualify for an earned income disallowance, described below. Note that the baseline income for such a resident will include the imputed welfare income, rather than being based on the actual cash welfare income. In the Monica Smith example, if Monica got a very good job paying \$1,000 per month, her \$500 income (based on actual and imputed welfare income), would be the income used to compute the rent she would pay, not the rent based on her \$300 cash welfare income. See the discussion in Chapter 10 on earned income disallowance.



Chapter 14. Utilities

14.0 Overview

There are two approaches to payment of utilities in public housing: PHA-paid and resident-paid. Generally PHA-paid utilities are master metered, but the regulations at 24 CFR Part 965, Subpart D require PHAs to convert to individually metered utilities, by having residents' individual units in master metered developments check metered or converting the entire master metered system to one with retail service between each resident and the utility company. If a PHA has check meters, residents receive a utility allowance based on usage and are charged (at the PHA's rate) for any use that exceeds the usage allowance. In developments with direct retail service, residents receive a cash-based utility allowance that is deducted from their total tenant payment.

The regulations permit PHAs to retain master metered systems if it is impractical to convert (e.g., in a centrally heated high-rise building) or not financially beneficial to the PHA (e.g., the rate for master metered utilities is so much lower than the rate for individual utilities and the cost for upgrading the utility distribution network is so high that it is less expensive to retain the master metered system).

At least every five years, PHAs with master metered developments that are not check metered are required to perform a cost/benefit analysis at each master-metered development to determine whether conversion to individual service with either check meters or direct retail service would be financially beneficial to the authority. PHAs that have units, such as scattered site homes, that are already individually metered and paid by the PHA are required to convert to retail service (24 CFR § 965.404).

Any conversion from a PHA-paid system requires that the PHA work closely with residents to plan the conversion, explain how it will affect individual residents, and describe methods of utility conservation. When check meters are being installed, PHAs are required to run the system for at least six months during which residents receive a copy of what their bills would be without having to pay them. In developing both consumption allowances for a check metered system or cash allowances for a retail system, the PHA must be mindful of any residents with disabilities who use greater than normal amounts of utilities because of their disability. Such residents must be provided with an adjusted allowance to account for the higher usage. For example, if a PHA had a resident who used a lung machine 24 hours per day, the family would be entitled to a higher than usual utility allowance.

When comparing check metering to direct retail service between the utility provider and the resident, many PHAs have opted for resident-paid utilities because it provides an incentive for the residents to save on energy consumption. It is also easier for a PHA to administer (no PHA meter readers, no computation



of individual bills for excess usage to residents, no additional collection requirements). Both residents and PHAs have responsibilities under each system. PHAs must provide residents with the utilities that are required for safe and sanitary housing, and residents must pay their utilities in a timely manner.

This chapter provides guidance on the following topics:

- Resident-paid utilities;
- PHA-paid utilities;
- Utility allowances and reimbursement; and
- Excess utility charges.

14.1 Resident-Paid Utilities

Under a resident-paid utility system, residents pay the cost of designated utilities directly to the utilities supplier. In those cases, the resident rent is reduced by an allowance for utilities developed by the PHA in accordance with the regulations under 24 CFR Part 965. The resident lease must state the utilities, services and equipment that will be supplied by the PHA without any additional cost, the utilities and appliances that will be paid or supplied directly by the resident, and the allowance for resident paid or supplied utilities and appliances.^{cxxxv}

The following requirements are suggested additions to an ACOP for residents living in or applicants being admitted to developments with resident-paid utilities:

- No applicant can be admitted nor tenant transferred to a development with resident-paid utilities unless he or she can obtain utility service.
- In developments with resident-paid utilities, each resident receives a monthly utility allowance that reflects a reasonable amount of utilities for the specific size and type of unit occupied.
- When a resident's Total Tenant Payment is less than the utility allowance, the PHA will pay a monthly utility reimbursement, equal to the difference between one month's total tenant payment and the utility allowance, either to the resident or to the utility company on the resident's behalf.
- When the supplier of utilities offers a "Budget" or level payment plan, it shall be suggested to the resident to pay his/her bills according to this plan. This protects the resident from large seasonal fluctuations in utility bills and ensures adequate heat in the winter and cooling in the summer.
- When a resident makes application for utility service in his/her own name, he or she shall sign a third-party notification agreement so that the PHA should be notified if the resident fails to pay the utility bill;
- Retaining utility service is the resident's obligation under the PHA's lease. Failure to retain utility service is grounds for eviction.



- Some PHAs pay residents' overdue utility bills and have service switched to the PHA account to avoid having utilities disconnected. Typically, this is a short term arrangement since the resident will have violated the lease and may be involved in eviction proceedings, but it will prevent the pipes in the unit from freezing or, much worse, a fire caused by some makeshift arrangement to keep the unit warm.
- When the actual energy consumption by tenants routinely exceeds a utility allowance, the PHA shall increase the allowance unless the PHA can provide evidence that the energy consumption can be attributed to a lack of non-energy conservative consumption. The fact that tenant consumption is routinely in excess of the PHA's utility allowance is material evidence that the PHA allowance is insufficient or that excess consumption may be due to factors not within the control of the tenants.

14.2 PHA-Paid Utilities

In some public housing developments, it is not practical to convert to individually metered utilities. These developments have PHA-paid utilities. Even at these sites, residents are expected to conserve utilities and to pay for excess usage. For example, the PHA may charge residents for excess utility usage based on resident-provided equipment such as freezers, washing machines, air conditioners, or extra refrigerators. The PHA typically will establish a monthly charge for each type of appliance and cite these in the lease. HUD regulations in 24 CFR § 990.102 define the required utilities as: water; electricity; gas; other heating, refrigeration and cooking fuels; trash collection; and sewerage services. Telephone service and cable TV are not considered utilities and therefore not calculated with the utility allowance.

14.3 Utility Allowances

The PHA must establish fair and reasonable utility allowances for individually metered utilities. The objective in establishing an allowance is to estimate as closely as possible a reasonable consumption of utilities by an energy-conscious household. In making the determination of what consumption is to be attributed to an energy conscious household, a PHA should distinguish between necessary appliances and luxury appliances. A PHA must be mindful of additional utility use by individuals with disabilities due to the need and use medical equipment or other needs. This distinction should reflect local usage and custom patterns. The utility allowance is generally determined by or in consultation with the supplier of utilities following an energy audit.

In check-metered developments, where utility allowances are based on usage, the PHA will generally read the meters on a quarterly or monthly basis. This meter reading helps overcome any single month's fluctuations in usage. The resident is then charged for any use above the allowance at the rate paid by the PHA.



In developments with retail service between the resident and the utility company, the utility allowance is a cash allowance. The PHA may either establish a flat, monthly allowance by unit size and type (which works effectively if residents are on a budget billing system with the utility company) or can adjust the utility allowances seasonally.

If residents use more utilities than the amount covered by the allowance, the resident must pay the higher amount. On the other hand, if residents use less than the allowance, they receive the benefit of their conservation.

PHAs are required to review their schedule of utility allowances annually, revise them if needed, as discussed below, and make them available for inspection by the residents. According to the regulations in 24 CFR § 965.502, no later than 60 days before the proposed effective date of the revision, the PHA must inform the residents of the planned allowances, surcharges and revisions.^{xxxxvi} Residents must be provided with an opportunity to make comments during a period no longer than 30 days before the proposed effective date of the revised schedule.^{xxxxvii} The schedule of allowances or surcharges is not subject to HUD approval before becoming effective by the PHA.

PHAs are required to revise their schedule of allowances before the end of the year if there is a change in the utility rate of 10 percent or more from the rate on which the allowance was based. A PHA would then be required to readjust the resident payment retroactive to the first day of the month following the month in which the last rate change taken into account became effective. Changes in costs passed through an automatic adjustment clause (such as, for example, a fuel adjustment clause, a purchase gas adjustment clause, or a gas recovery clause) shall be considered a “rate change” for this procedure. This type of rate change is not subject to the 60-day notice requirement (24 CFR § 965.507(b)).

This requirement applies to non-tariffed home energy sources as well as to tariffed utility costs. If at the end of the current winter heating season (October 1 through April 30 of each year), the average price of a non-tariffed fuel has increased by 10 percent or more, relative to the price of the same fuel for the winter heating season in or immediately preceding the date on which the resident payment became effective, the PHA shall readjust the resident payment retroactive to the month following the month in which the last rate change taken into account became effective.

14.4 Utility Reimbursement

When a resident’s Total Tenant Payment (TTP) is less than the utility allowance, the PHA must make a monthly utility reimbursement equal to the difference between the TTP and the utility allowance.^{xxxxviii} In the Public Housing program, a PHA may pay utility reimbursement either to the family or directly to the utility supplier on behalf of the family. Payment of utility reimbursements directly to the utility company



involves considerably less bookkeeping for the PHA. Typically, the PHA sends a check to the utility company each month with a list of the residents by address and utility account number on whose behalf reimbursements are being paid. The PHA pays early enough in the month that the resident's utility bill would reflect the PHA's payment.

Residents paying an income-based rent are eligible for a utility reimbursement, while residents who choose a flat rent are not eligible for a utility reimbursement.

14.5 Reasonable Accommodation of Residents With Disabilities (24 CFR § 965.508)

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR Part 8 to make the program accessible to and usable by the family with a disability (24 CFR § 965.508).

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.



Chapter 15. Community Service and Economic Self-Sufficiency

15.0 Overview

Community Service is defined as "the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community." Community Service is not employment and may not include political activities (24 CFR § 960.601).

The Community Service and Economic Self-Sufficiency requirements mandate that each non-exempt adult household member⁴⁶ shall either contribute eight hours per month of community service within their community, or participate in an Economic Self-Sufficiency program for eight hours per month.^{xxxxix} The requirements can also be met by a combination of eight hours of Community Service and participation in an Economic Self-Sufficiency Program. This chapter provides guidance on administration of this requirement.

15.1 How PHAs Can Administer Community Service/Self-sufficiency Programs

PHAs must develop a local policy for administration of the community service/self-sufficiency program for public housing residents.^{cxl} The policy should contain a number of elements, including for example: PHA responsibilities in administering the requirement; eligible activities; exemptions from the requirement; and review of compliance. These elements are described further below. See Appendix VI for a Sample Community Service Policy.

PHAs may administer qualifying community service and self-sufficiency activities directly or make the activities available to residents through a contractor or partnership with qualifying organizations (including resident organizations), community agencies, or institutions.

In administering the community service/self-sufficiency program, a PHA should, to the extent possible, provide names and contacts of agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations. Persons with disabilities are exempt from the requirement only if they certify that because of their disabilities, they cannot comply with the requirement. The PHA should also provide referrals for volunteer work or self-sufficiency programs.

⁴⁶ 18 years or older



15.2 Eligible Community Service Activities

Eligible community service activities that can be performed include, but are not limited to:

- Work at a local public or non-profit institution, including but not limited to: school, Head start, other before or after school program, child care center, hospital, clinic, hospice, nursing home, recreation center, senior center, adult day care program, homeless shelter, feeding program, food bank (distributing either donated or commodity foods), or clothes closet (distributing donated clothing), etc.;
- Work with a non-profit organization that serves PHA residents or their children, including but not limited to: Boy Scouts, Girl Scouts, Boys or Girls Club, 4-H Club, PAL, other children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Center, Community clean-up programs, Beautification programs, etc.;
- Work with any program funded under the Older Americans Act, including but not limited to: Green Thumb, Service Corps of Retired Executives, Senior meals programs, Senior Center, Meals on Wheels, etc.;
- Work with any other public or non-profit youth or senior organizations;
- Work as an officer of a development or citywide resident organization;
- Work as a member of the Resident Advisory Committee;
- Work at the Authority to help improve physical conditions (for example as a floor, grounds or building captain);
- Work at the Authority to help with children's programs;
- Work at the Authority to help with senior programs;
- Helping neighborhood groups with special projects;
- Working through a resident organization to help other residents with problems, serving as an officer in a Resident Organization, serving on the Resident Advisory Board; and
- Caring for the children of other residents so they may volunteer.

PHAs should notify their insurance companies if residents will be serving at the PHA.

15.3 Eligible Self-sufficiency Activities

Eligible self-sufficiency activities in which residents may engage include, but are not limited to:

- Job readiness programs;
- Job training programs;
- Skills training programs;
- Higher education (Junior college or college);



- GED classes;
- Apprenticeships (formal or informal);
- Substance abuse or mental health counseling;
- English proficiency or literacy (reading) classes;
- English as a second language classes;
- Budgeting and credit counseling; and
- Carrying out any activity required by the Department of Public Assistance as part of welfare reform.

15.4 Exempt Residents

A PHA must identify in the community service/self-sufficiency policy the residents that are exempt from the program work/self-sufficiency requirement, including persons who are:^{cxli}

- 62 years or older;
- Person with disabilities and certifies that, based on the disability, he or she cannot comply with the requirement;
- Caretakers of a person with disability who has certified that based on the disability, he or she cannot comply the requirement;
- Currently working at least 30 hours per week;
- Certified as exempt from work activities under a State Programs as stated by the Social Security Act or any other welfare state program; and
- Members of a family receiving benefits from a State Welfare Program in compliance with the program's requirements.

The PHA should describe in the Community Service Policy the process it will follow to determine which family members are exempt from the requirement as well as the process for determining any changes to the exempt status of the family member. The PHA's must provide the family with exemption verification forms, Recording/Certification documentation forms, and a copy of the Policy at initial application and at lease execution.^{cxlii} The PHA makes the final determination whether or not grant the exemption from the community service requirement. If a Resident does not agree with the PHA's determination, he/she can dispute the decision through the PHA's Grievance Procedures.



15.5 Noncompliant Residents

An exemption to the requirement must be verified annually by the PHA.^{exliii} At least thirty days before the annual reexamination and/or lease expiration, the PHA must begin reviewing the exempt or non-exempt status and compliance of family members.^{exliv} If the PHA finds a family member to be noncompliant, the PHA must enter into an agreement with the noncompliant member and the Head of Household to make up the deficient hours over the next twelve (12) month period.^{exlv} If, at the next annual re-examination, the family member still is not compliant, the PHA is not permitted to renew the lease and the entire family will have to vacate, unless the noncompliant member agrees to move out of the unit. The family may use the Authority's Grievance Procedure to protest the lease termination.

15.6 Other HUD Requirements

A PHA policy must also state the following requirements:

- The eight (8) hours per month may be either volunteer work or self-sufficiency program activity or a combination of the two.
- At least eight (8) hours of activity must be performed each month.^{exlvi} An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The Authority will make the determination of whether to permit a deviation from the schedule.
- Activities must be performed within the community and not outside the jurisdictional area of the PHA.

15.7 Resident Responsibilities

At lease execution or re-examination after the effective date of the adopted policy, all adult members (18 or older) of a public housing resident family must:

- Provide documentation that they qualify for an exemption, if they claim to be exempt from Community Service requirement; and
- Sign a certification that they have received and read the policy and understand that if they are not exempt, failure to comply with the Community Service requirement will result in non-renewal of their lease.

At each annual re-examination, non-exempt family members must present a completed documentation form (PHA Form) of activities performed over the previous twelve (12) months. This form will include places for signatures of supervisors, instructors, or counselors certifying to the number of hours contributed. See Appendix VI for a sample form.



If a family member is found to be noncompliant at re-examination, the member and the Head of Household will sign an agreement with the Authority to make up the deficient hours over the next twelve-month period.

15.8 Change in Exempt Status

When an adult resident's exempt status changes during the year:

- If, during the twelve-month period, a non-exempt person becomes exempt, it is his/her responsibility to report this to the Authority and provide documentation.
- If, during the twelve-month period, an exempt person becomes non-exempt, it is his/her responsibility to report this to the Authority. The Authority will provide the person with the Recording/Certification documentation form and a list of agencies in the community that provide volunteer and/or training opportunities.

15.9 No Substitution of Community Service Workers for PHA Employees

No PHA may substitute any community service activity performed by a resident for work ordinarily performed by a PHA employee.



Chapter 16. Pet Policies/Assistance Animals

16.0 Overview

Residents who live in public housing developments are permitted to own pets, subject to the requirements of two different laws. Residents in general occupancy developments are now permitted to own pets (see Section 31 of the United States Housing Act and 24 CFR § 960.701–707). Residents in elderly/disabled (mixed population) developments have been permitted to own pets for some time (see Section 227 of the Housing and Urban-Rural Recovery Act of 1983 and 24 CFR § 5.300-5.327 and 5.380). This chapter provides guidance on pet ownership in public housing.

16.1 Non-Applicability of Pet Policies to Assistance Animals

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, is not subject to PHA pet policies.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision;
- Alerting individuals who are deaf or hearing impaired;
- Providing minimal protection or rescue assistance;
- Pulling a wheelchair;
- Fetching items;
- Alerting persons to impending seizures; or
- Providing emotional support to persons with disabilities who have a disability-related need for such support.

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability.



A PHA's refusal to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation;
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others;
- The presence of the assistance animal would pose an undue financial and administrative burden to the provider; or
- The presence of the assistance animal would fundamentally alter the nature of the provider's services.

Assistance animals are a means to provide a reasonable accommodation for an individual with a disability, but a person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal.^{exlvii} The PHA would be permitted to verify that the individual requesting the assistance animal is a person with a disability and that the animal is needed to assist with the disability. As with all other disability-related inquiries, the PHA may not ask about the nature or severity of the resident's disability.

16.2 Comparison of Pet Policy Requirements for Elderly and General Occupancy Developments

The table below lists the components of pet policies that are covered for both elderly and general occupancy developments. Both rules grant each PHA significant discretion in establishing pet policies appropriate for their local situation. Both rules emphasize that policies must be reasonable.^{exlviii} Thus, PHAs may fashion similar pet policies for both types of developments.

However, some requirements are different for each type of development. Pet policies for general occupancy developments are covered by the PHA Plan, thus resident participation is obtained from the Resident Advisory Board. In addition, the pet deposit requirements are different for each type of development.

For practicable purposes, PHAs may choose to follow the more detailed Part 5 requirements in developing their pet policies. It should be noted that the pet rules for elderly/disabled projects that are found in 24 CFR Part 5 apply both to HUD's public housing and assisted housing programs. Only



sections specifically applicable to public housing apply to public housing elderly developments. Assisted housing's requirements are more prescriptive than public housing's under the Part 5 rule.

PET POLICIES	ELDERLY/MIXED POPULATION DEVELOPMENTS	GENERAL OCCUPANCY DEVELOPMENTS
1. Definition of common household pet	The pet rules may contain a reasonable definition of common household pet. §5.306(b) and §5.318(a)	A resident may own one or more common household pets or have one or more present in the unit, subject to the reasonable requirements of the PHA. §960.707(a)
2. Resident participation	The PHA must notify all tenants in writing during development of pet rules. The PHA must develop specific procedures governing tenant consultation. Procedures must give tenants adequate opportunity for review and comment before pet rules are issued for effect. §5.312 and §5.380	Resident input is obtained from the Resident Advisory Board, as part of an agency's PHA Plan. §960.707(e)
3. Consistency with State and local laws	The pet rules adopted must not conflict with applicable State or local law or regulations. §5.315(d)	Reasonable limitations may include prohibitions on types of animals that the PHA classifies as dangerous, if such classifications are consistent with applicable State and local law. §960.707(b)(3)
4. Limitations on number of pets in a unit	Pet rules may consider tenant and pet density and may place reasonable limitations on the number of common household pets allowed in each dwelling unit. §5.318(b)	Reasonable requirements may include limitations on the number of animals in a unit, based on unit size. §960.707(b)(2)
5. Limitations on the number of pets in a development	The pet rules may place reasonable limitations on the size, weight, and type of common household pets allowed in the development. §5.318(c)	Reasonable requirements may include restrictions or prohibitions based on size and type of building/project, or other relevant conditions. §960.707(b)(4)



PET POLICIES	ELDERLY/MIXED POPULATION DEVELOPMENTS	GENERAL OCCUPANCY DEVELOPMENTS
6. Pet deposits	Pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. PHA may use the pet deposit only to pay reasonable expenses attributable to pet in the project, including but not limited to cost of repairs and replacements to and fumigation of tenant's dwelling unit. PHA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves out or no longer owns or keeps a pet in the unit. Maximum pet deposit charged by PHA, on a per unit basis, must not exceed the higher of the total tenant payment or a reasonable fixed amount as PHA may require. Pet rule may permit gradual accumulation of pet deposit by the owner. §5.318(d)(1) and (3)	Reasonable requirements may include requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the property relating to presence of pets, a refundable pet deposit to cover additional costs attributable to pet and not otherwise covered, or both. A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits or, if State or local law has no requirements regarding pet deposits, for rental security deposits, if applicable. PHA must comply with such applicable law on retention of the deposit, interest, and return of the deposit or portion thereof to the resident, and any other applicable requirements. §960.707(b)(1) and (d)
7. Protecting the health and safety of pets and residents	Pet rules may prescribe standards of pet care and handling, but must be limited to those needed to protect condition of tenant's unit and the general condition of the project premises, or to protect health or safety of present tenants, PHA employees, and the public. §5.318(e)	The resident must maintain each pet in accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations. §960.707(a)(2)
8. Pet registration	Pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. §5.318(f)	Reasonable requirements may include registration of the pet with the PHA. §960.707(b)(5) Also, see number 7.
9. Forbidding removal of any pet's vocal chords	Pet rules may not require pet owners to have any pet's vocal chords removed. §5.318(e)	PHA may not require pet owners to have any pet's vocal chords removed. §960.707(c)
10. PHA Plan	No requirement.	Annual Plans are required to contain information about the PHA's pet policy. §960.707(e)



PET POLICIES	ELDERLY/MIXED POPULATION DEVELOPMENTS	GENERAL OCCUPANCY DEVELOPMENTS
11. Designated pet areas	PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Also, pet rules may designate buildings, floors, or sections of buildings for residency generally by pet-owning tenants. PHAs may direct initial tenant moves as may be needed to establish pet and no-pet areas. PHA may not refuse to admit (or delay admitting) an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. PHA may adjust pet and no-pet areas or direct such additional moves as may be necessary (or both) to accommodate such applicants or meet changing needs of existing tenants. \$5.318(g)	See number 5.
12. Temporary pets	Pet rules may exclude pets not owned by a tenant to be kept temporarily on the project premises. Pets are "kept temporarily" if they are kept in the tenant's dwelling unit for less than 14 consecutive days and nights. HUD encourages PHAs to permit the use of a visiting pet program sponsored by the humane society. \$5.318(h)	See number 1.
13. Lease Provisions	PHA lease must state that tenants are permitted to keep common household pets in their units, subject to the PHA's Pet rule, made a part of the lease by reference. Tenant agrees to comply with pet rules and violation of pet rules may be grounds for removal of pet, termination of pet owner's tenancy or both. \$5.321	
Miscellaneous rules	PHA may bar pets from specified common areas (e.g. lobbies, laundry rooms, social rooms) so long as pet owners can get in and out of building. PHA may require owner to control pet noise and odor. PHA may require dogs and cats to be neutered or spayed. PHAs may choose not to issue pet rules, but any rules issued must follow PHA's lease, \$5.3 rule , and state and local law.	



16.3 PHA Pet Policy Practices

Although the regulations grant PHAs much discretion in establishing pet policies, below are some sample reasonable practices from PHAs who have established successful policies for general occupancy developments. It is important to note, however, that different or varying guidelines may be locally appropriate and that pet policies must comport with applicable local laws.

- Common household pets most often include domesticated animals, such as cats, dogs, fish, and birds that are traditionally kept in the home for pleasure rather than for commercial purposes. Many PHAs do not permit reptiles, rodents, insects (e.g., ant farms) or arachnids (tarantulas) as common household pets.
- PHA pet policies may distinguish between the numbers and types of pets permitted at developments that have high densities (and, often, little open space) and those with more room both in units and on the grounds.
- It may be reasonable to place strict limits on the sizes of dogs and cats permitted at a very high-density site where residents do not have private yards and there is little open space for pets to be exercised. The same limitation would not necessarily be reasonable at a site with plenty of open space that could be devoted to pets, while still permitting resident's outdoor space for recreation.
- Most PHAs require residents to register their pet with the housing authority. Registration often includes the certification from a licensed veterinarian of required pet inoculations, information to identify the pet; and the name and address of the pet owner and the name and address of a responsible party to care for the pet if the owner is unable to. This information would be updated annually as part of the reexamination process.

The amount of a pet deposit typically takes into account the size, potential damage by and activity of the pet. For example, owners of hamsters would not be charged the same fee as a dog or cat owner.

- Dogs must be kept on a leash and controlled by a responsible individual when taken outside.
- Establishing pet areas and no-pet areas within their developments may be an excellent way for the PHA to deal with issues such as individuals who have severe allergies to pets or who will be bothered by even reasonable levels of noise that pets create.



PART 5: THE PUBLIC HOUSING LEASE



Chapter 17. General Public Housing Lease Requirements

17.0 Overview

HUD rules establish both required and prohibited provisions for public housing leases. In addition, PHAs are permitted to add other provisions as long as they are considered reasonable. In the case of any conflict between the proposed HUD lease and state law, the lease adopted must follow the rule that is the most beneficial to the tenant. The requirements for public housing leases are detailed in 24 CFR Part 966 Subpart A: Dwelling Leases, Procedures and Requirements. These rules are specific and unique to the public housing industry.⁴⁷

In addition to HUD's requirements for lease language, PHAs are bound by state and local landlord-tenant laws. Although a number of states have based their landlord-tenant law on either the Uniform Residential Landlord Tenant Act (URLTA) or the Model Residential Landlord-Tenant Code, statutes are not consistent between states. Beyond the public housing program requirements, federal regulations require specific language to prevent discrimination, and some leases may contain further court-ordered wording to provide corrective action based on previous court settlements.

Public housing leases establish the basis of the legal relationship between the PHA and tenant. The landlord-tenant relationship is founded on duties prescribed by regulation, statutory law, common law, and the individual lease. To ensure compliance with state and local requirements, each PHA should request that its Legal Counsel review the lease form for compliance with state and local requirements.

Many PHAs have developed and continue to use lease provisions from previous lease forms or have modified leases used by PHAs in other jurisdictions that may not be appropriate to or even legal in their jurisdiction. PHAs may be held legally accountable for any illegal or unenforceable clauses in their lease, regardless of their origin. Generally, any reasonable terms and conditions not prohibited by law can be included in a rental agreement, if they are fairly applied.

There are two HUD rules related to lead-based paint that affect public housing leases: the Lead Disclosure Rule and the Lead Safe Housing Rule. Under the HUD-EPA Lead Disclosure Rule, the PHA informs the family about the dangers of deteriorated lead-based paint and lead-contaminated dust and soil.^{extix} Under

⁴⁷ For example, tenants and tenant organizations must be given a 30 day opportunity to review and make written comment on any changes to the lease before adoption by the PHA. Comments submitted must be considered by the PHA before adoption of any new lease form (24 CFR § 966.3).



the HUD Lead Safe Housing Rule, PHAs evaluate units for lead-based paint and lead-based paint hazards, and eliminate or control lead hazards.

This chapter of the Guidebook covers the following topics:

- Lease changes mandated by the Quality Housing and Work Responsibility Act of 1998;
- Prohibited lease provisions;
- Lead-based paint requirements that affect the lease;
- Optional provisions: reasonableness test;
- Relationship of the lease to occupancy policies;
- Relationship for the lease to state law; and
- Public Housing Lease Requirements.

17.1 Required lease provisions: Changes mandated by the Quality Housing and Work Responsibility Act of 1998

The provisions that must be included in all public housing leases are described under 24 CFR § 966.4, and are discussed below in Section 17.6. In general, the most significant changes required by QHWRA in PHA policies are those needed in the ACOP, but a few changes must also be made in PHA leases:

- The lease must state that additions to a tenant household other than births, adoption, or court-awarded custody require the family to request PHA permission prior to permitting anyone not listed on the lease to occupy the unit (24 CFR § 966.4 (a)(v)).
- The lease term must be one year, renewable for subsequent one year terms (many PHAs had month-to-month leases or month-to-month renewals) (24 CFR § 966.4 (2)(i)).
- The lease must contain a clause stating that PHA may not renew the lease if the family has violated the requirements to perform community service or economic self-sufficiency activities (24 CFR § 966.4 (2)(ii)).
- Although it is for one year, the lease may be modified at anytime by written agreement of the tenant and the PHA (24 CFR § 966.4 (3)). Failure by a tenant to accept a lease revision is grounds for termination of tenancy (24 CFR § 966.4 (l)(2)(i)).
- The PHA must waive the escrow deposit for a grievance hearing if it is requested in connection with a minimum rent hardship exemption (24 CFR § 966.55 (e)(2)).
- The prohibition (in many PHA leases) against pets in family developments must be revised to permit pets, in compliance with the PHA's pet policy. (See Chapter 16.)
- The lease should reference any changes in annual and interim re-examinations contained in the ACOP.



- The PHA lease language has been strengthened and made more explicit on termination of tenancy for criminal activity or alcohol abuse.

17.2 Prohibited Provisions

Lease clauses of the nature described in 24 CFR § 966.6 may not be included in new leases between a PHA and a tenant, and are required to be deleted from existing leases, either by amendment or execution of a new lease. Note that this section of the regulations is not all-inclusive, rather, it is illustrative. The specific prohibited lease provisions include:

- Confession of judgment;
- Distraint for rent or other charges - agreement by tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform;
- Exculpatory clauses - agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents;
- Waiver of legal notice by tenant prior to actions for eviction or money judgments;
- Waiver of legal proceedings- authorization to the landlord to evict the tenant or hold or sell tenant's possessions whether the landlord determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties;
- Waiver of jury trial - HUD has issued recent determinations that no form of jury trial waiver is permissible in a PHA lease;
- Waiver of right to appeal judicial error in legal proceeding; and
- Tenant chargeable with cost of legal actions regardless of outcome.

Beyond the prohibited provisions established by 24 CFR § 966.6, State and local landlord-tenant statutes may establish additional prohibited provisions.⁴⁸

Other state laws may prohibit other types of lease clauses. These often include but are not limited to:

⁴⁸ For example, in Rhode Island, no rental agreement can make a tenant agree to a waiver of rights or remedies provided by law, or allow the landlord to waive or limit legal responsibilities. Since illegal clauses are unenforceable, they should be deleted from contractual agreements to avoid giving tenants a misleading impression of their responsibilities. If a landlord deliberately uses a rental agreement containing provisions that are known to be prohibited, the tenant may go to court to recover actual damages, an amount equal to three times the rent, and attorney fees.



- Separation of right to collect rent from the landlord's obligations regarding the property and its maintenance and operations;
- A provision designed to limit the liability of the owner, including waiver of liability;
- Any agreement to a confession of judgment on behalf of the tenant;
- Any agreement to the recovery of attorney fees in an amount greater than that allowed by Code;
- The landlord's collection of a security deposit (including all other deposits) greater than one month's rent;
- The landlord's retention of a security deposit longer than 14 days after termination of the rental agreement, without appropriate justification;
- Unfair enforcement of house rules by the landlord; and
- Denying the landlord the right to reasonable access to dwelling units.

Note: Most states prohibit unlawful removal or exclusion from a unit (lockout). For example, if the landlord excludes the tenant from the premises without a court order (a lockout) then the tenant may recover possession or terminate the rental agreement. In either case, the tenant may be able to recover an amount equal to free rent or free occupancy for two months, and the costs of suit, including reasonable attorney fees.

Lease clauses allowing retaliatory evictions are also strictly prohibited. Further, leases generally cannot allow actions for recovery of possession by turning off utilities.

Lease Provisions Based on the Lead-Based Paint Requirements

There are two HUD rules related to lead-based paint that affect public housing leases—the Lead Disclosure Rule and the Lead Safe Housing Rule. The HUD-EPA Lead Disclosure Rule specifies the types of information that PHAs with target housing must give to residents prior to occupancy.^{cl} Target housing is any housing constructed before 1978, except for 1) housing for the elderly or persons with disabilities (unless a child under the age of six is expected to reside there), and 2) zero-bedroom dwellings.

Under the Lead Disclosure Rule, the PHA informs the family of the dangers of lead-based paint using the Lead Hazard Information Pamphlet. The lease must include a Lead Disclosure Addendum, which:

- Documents receipt of the Lead Hazard Information Pamphlet;
- Discloses the presence of known lead-based paint and lead-based paint hazards;



- Documents the receipt of information (i.e., any relevant report on lead-based paint such as evaluation reports, reduction activity reports, clearance reports, etc.) on lead-based paint and its hazards; and Contains the Lead Warning Statement.

Remember that the Lead Hazard Information Pamphlet and the Lead Disclosure Addendum are required regardless of the presence of children in the family. If the PHA is taking steps to improve access to persons with limited English proficiency, remember also that these efforts should include lead safety education and information, in particular the Lead Disclosure Addendum that is part of the lease. The Lead Hazard Information Pamphlet is available in English, Spanish and Vietnamese (from www.hud.gov/offices/lead, www.epa.gov/lead, or the National Lead Information Clearinghouse [800-424-LEAD]).

The HUD Lead Safe Housing Rule addresses the conditions that cause lead-based paint hazards for children and residents (as well as workers) in public housing and other federally assisted housing.^{eli} Under this Rule, PHAs evaluate the units for lead-based paint and lead-based paint hazards and control or eliminate (abate) the hazards. Lead hazard reduction typically involves abatement during the course of physical improvements with the modernization of units. However, when modernization of units is not immediately planned, PHAs take steps to control hazards through interim controls. The lease should explain how residents are affected by abatement or interim controls under the transfer policy.^{elii} Specifically, residents (and their belongings) have to be protected from lead hazards; they are not allowed to enter the worksite until after reduction activities are complete and clearance is achieved. In some cases, residents may have to be temporarily relocated to a suitable unit before the work starts.

17.3 Optional Provisions: Reasonableness Tests

Historically, many PHAs have adopted late payment penalties and security deposits and now consider these provisions to be requirements. However, these terms are considered optional under the lease requirements of 24 CFR § 966.4. The lease may require payment penalties for late payment. Likewise the lease may require security deposits not exceeding one month's rent or such reasonable fixed amount set by the PHA. PHAs may permit security deposits to be gradually accumulated by the tenant. Subject to state and local laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities. Optional provisions included in many PHA leases relate to a wide range of topics including for example: use or possession of weapons or illegal drugs in a PHA unit; specific responsibilities for tenant maintenance of a unit or yard; permissible tenant-initiated improvements to premises; and locations where tenant-owned vehicles may and may not be parked.

Lease provisions, taken as a whole, should be “reasonable” according to their plain meaning.



17.4 Reasonableness Test

Since the landlord drafts and establishes the lease document, the terms are always subject to the reasonableness test. The lease terms are subject to court review when an action proceeds to court, such as in a lease termination.

The important point to remember is that courts have perceived landlords to have a greater bargaining strength than tenants have, and therefore are subject to a higher standard for errors and misinterpretations of the lease since they are the drafter of the document. If a term is found to be unfair then that term will not be binding on the party to whom it applies.

17.5 Relationship of the Public Housing Lease to Occupancy Policies

Housing authorities should ensure that the occupancy policies and dwelling lease are consistent. The occupancy policy defines and establishes policies related to annual income, rents, the waiting list, reexaminations, occupancy standards, transfers, rent adjustments, utilities, or other provisions that are enforced through the lease. For example, if the housing authority's ACOP has a fixed rent policy, only requiring an annual reexamination of income and no rent increases between reexaminations except for fraudulent activity, the housing authority would have no basis for increasing the rent between reexaminations. PHAs should ensure that the lease is offered in accessible formats for persons who require such accommodations.

The lease also incorporates many items by reference such as the schedule for charges in addition to rent, schedule for flat rents, house rules or other regulations that the housing authority has approved and implemented. The schedules and reference documents must be publicly posted in a conspicuous manner in each development office and furnished to applicants and tenants upon request in accordance with 24 CFR § 966.5. Some housing authorities as a general practice provide these to each tenant at move-in.

Note: Making schedules, rules and regulations a part of the lease by reference means their modification is subject to the 30 day comment period required for lease changes: at least 30-day written notice to each affected tenant containing the proposed modification, reasons for the modification, and providing the tenant and tenant council an opportunity to present written comments that shall be taken into consideration by the PHA prior to the proposed modifications becoming effective. A copy of the notice shall be:

- Delivered directly or mailed to each tenant; or



- Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within each project.

Another example where the lease and admission and occupancy policies interface is the community service requirements. The lease contains specific language and terms on the nonrenewable clause of the lease should the tenant fail to perform the required community service. However, the housing authority must also establish policies and procedures on the implementation of the community service requirement. If the housing authority has failed to provide the policies and procedures enacting the community service requirement, the housing authority would not be able to proceed with the enforcement of this particular lease provision.

17.6 Public Housing Lease Requirements

HUD prescribes provisions that must be incorporated in leases by PHAs for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants. The specific provisions are detailed in accordance with 24 CFR § 966.4.

Required Provisions

Lease requirements contain specific provisions described below in accordance with 24 CFR § 966.4. In this section, the Guidebook presents these mandatory provisions. Specific sections and provisions required by HUD are included (the appropriate section of 24 CFR § 966.4 is noted).

Parties, Dwelling Unit and Term (24 CFR § 966.4(a))

The lease must identify the Housing Authority (the landlord) and name the head or co-heads who will be the "tenant" as described under state law.^{cliii} The specific address of the unit leased must be indicated as well as any other information needed to identify the dwelling unit.^{cliv}

The composition of the household as approved by the PHA must be identified in the lease.^{clv} The lease must state that it is the responsibility of the tenant to inform the PHA promptly of the birth, adoption or court-awarded custody of a child.^{clvi}

Note: Depending on the PHA's lease and ACOP, the PHA may transfer a family on an interim basis (between annual reexaminations) or may make occupancy standards transfers only at the annual reexamination.



Many PHAs also indicate the unit's number (from their computer system) and the tenant's account number in this section of the lease.

Tenants must obtain approval from the PHA to add any other occupant to their household including a Live-in Aide.^{clvii}

Note: Tenants are required to wait for a PHA's approval before allowing additional persons to move into the premises. Failure on the part of tenant to comply with this provision is a serious violation of the terms of the lease, for which a PHA may terminate the lease.

The lease term must be one year, renewable for subsequent one year terms (prior to the QHWRRA, many PHAs had month-to-month leases or month-to-month renewals) (24 CFR § 966.4 (2)(i)).

The lease must contain a clause stating that PHA may not renew the lease if the family has violated the requirements to perform community service or economic self-sufficiency activities (24 CFR § 966.4 (2)(ii)).

Note: PHAs must determine whether a tenant has complied with the agency's community work requirement (or the work requirement established under the state welfare reform plan) at least 30 days prior to the end of the lease. If the PHA determines that the tenant has not complied with the applicable work requirement, the PHA may not renew the lease. However, tenants must be advised of their right to due process if the lease is not renewed.

Payments Due Under the Lease (24 CFR § 966.4 (b))

The lease must specify the amount of tenant rent, both for a full month and the pro-rated amount for the initial partial month (if applicable).^{clviii} In addition, if the tenant will be paying any utilities directly to the utility supplier, the PHA must grant the tenant a Utility Allowance. The amount of the utility allowance will be specified in this section. Finally, if the tenant's income-based rent is less than the utility allowance, the amount of the utility reimbursement should be listed on the lease.⁴⁹

Note: PHAs may modify their leases to indicate whether the tenant has chosen to pay flat rent or income-based rent. Tenant has yearly right to choose.

⁴⁹ Tenants paying flat rents do not receive utility reimbursements. Rather, the PHA should take into account any tenant-paid utilities in establishing the amount of the flat rent.



All charges in addition to rent must be listed in the lease.^{clix} If the PHA charges a security deposit or late charges for unpaid rent, the lease must indicate these here.^{clix} The PHA's approach to excess utility charges should be described in this section. Finally, the maintenance charges to tenants for damage to units, common areas or grounds caused by tenant action or neglect would be detailed here, as well as the basis for such charges.

Note: In an effort to improve their chances of collecting delinquent charges in addition to rent many PHAs have written their leases in such a way that the charges, if not paid timely, are called delinquent rent. This is not permitted under the regulation. First, such charges are not rent and, if they were rent, would result in overcharging families paying income-based rent, since rent would then exceed the prescribed percentage of income under the statute. In addition, there are different notice requirements for non-payment of rent and other forms of lease termination.

Note: Finally, many state statutes draw a distinction between lease termination and eviction actions for non-payment of rent and such actions for "other good cause." While PHAs may certainly terminate leases under Federal law for failure to pay charges in addition to rent, such lease terminations are "good cause" terminations, not non-payment terminations.

The rule provides guidance in both the amount of security deposit that may be charged (one month's rent or such reasonable fixed amount as may be required by the PHA). Note that the amount of the security deposit is to be "fixed," and not to change when income-based rent changes.

Typically, common maintenance charges (e.g., broken windows, lock replacements) are listed on a Schedule of Charges in addition to rent. The Schedule of Charges must be referenced in the lease or added to the lease as an addendum. The Schedule of Charges should include a statement that work that is not covered on the schedule will be charged to the tenant based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Redetermination of Rent and Family Composition (24 CFR § 966.4 (c))

This section of the lease describes the PHA's policy on annual and interim reexaminations. The right of tenants paying income-based rent to have their rent reduced, if their income is verified to have decreased should be detailed, as well as situations in which tenants are required to report increases in income and changes in family composition. Further, this section of the lease must indicate if and when the PHA will increase rents between regular reexaminations. Finally, the PHA must ensure that the policy set forth in the lease is precisely the same as that in the Admissions and Continued Occupancy Policy. Even at PHAs with "fixed" rent policies, rents can be increased retroactively if it is found that a tenant has misrepresented the facts upon which rent was based (24 CFR § 5.569).



In addition to information described above, the lease should make clear that the tenant agrees to provide timely and accurate information regarding income and family composition, and agrees to transfer to a different unit if the PHA finds the current unit to be the wrong size for the tenant's family.

This section of the lease must note that the family is entitled to an explanation of the PHA's determination of rent or the family's obligation to transfer,^{clxi} and that the tenant may request a hearing under the PHA's Grievance Procedure if he or she disagrees with the PHA's determination or proposed course of action. Note that the right to a grievance hearing applies whether a tenant's rent is increased or decreased.

Tenant's Right to Use and Occupancy (24 CFR § 966.4 (d)(1))

The lease must state that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit, including reasonable visits by their guests. The term “guest” means a person in the leased unit with the consent of a household member, and is defined in both regulations and the PHA's ACOP.

Note: PHAs establish their own policies about the number of guests permitted at one time, the maximum time a guest may visit during the year, and the procedure tenants should use if they want a guest to stay longer than is normally permitted under the lease (e.g., A tenant has a son who is not on the lease and who is in the military with an assignment in Germany. The tenant might request and the PHA grant permission for the son to visit longer than usual).

Visitors may be permitted in a dwelling unit as long as they have no previous history of behavior on PHA premises that would be a lease violation. PHAs must adopt reasonable provisions regarding visitors and guests as part of their lease. The length of time for any person to be in a unit as a visitor or as a guest must be specified in the lease.

If the PHA permits tenants to carry out profit-making activities in their units (which is permitted under the regulation), this section of the lease should describe the PHA's policies on obtaining permission for such activities and where tenants may review the PHA's policy on the subject.

Note: It is wise for PHAs to have written policies on the types of legal profit making activities that are permitted and prohibited in public housing units. PHAs usually permit activities that will not disturb neighbors, increase traffic, or result in a significant increase in the use of PHA supplied utilities. Most PHAs require tenants to demonstrate that they have the insurance and any necessary permits or licenses to carry out their proposed businesses.



The PHA's policy on occupancy in the dwelling unit for Live-in-Aides and children should be detailed in this section of the lease. In addition, the PHA cannot use unit size as a reason to refuse to allow a Live-in-Aide as a reasonable accommodation to a tenant or resident's disability.

Note: Many PHAs require that individuals who are proposed as Live-in Aides be subject to the criminal history check that is performed on all other adult applicants. This is permitted.

Finally, this section of the lease is where the modified pet provisions will be found.

Note: Some PHAs include language in this section of the lease relating to how the PHA will handle a situation in which the tenant becomes unable to comply with the lease. Note that if the inability to comply is related to a disability, the tenant must be offered a reasonable accommodation if requested^{ckii} (for example, a tenant whose vision became too poor for the tenant to keep the apartment clean could be referred to a low-cost or subsidized chore service). When a reasonable accommodation is not possible or when it will not result in lease compliance, the PHA may take appropriate actions to terminate the lease. Some PHAs actually work closely with tenants in this situation to help them find more appropriate housing.

The PHA's Obligations (24 CFR § 966.4 (e))

The PHA's lease must state its responsibilities towards the tenants, confirming its commitment in providing housing that is decent, safe and sanitary. The following is a list of the minimum PHA obligations from the 24 CFR Part 966.

- To maintain the dwelling unit and the project in decent, safe and sanitary condition;
Note: This obligation is also stated in the PHA's Annual Contributions Contract. PHAs that have been placed in receivership have generally breached this requirement. The obligations listed below expand on this most basic obligation.
- To comply with the requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;
- To educate applicants about the dangers of lead-based paint and notify applicants of the presence of known lead-based paint and lead-based paint hazards;
- To notify residents of the results of any evaluation and/or reduction activities, protect residents when addressing lead-based paint hazards, respond to children with environmental intervention blood lead levels, conduct proper ongoing maintenance activities with lead-safe work practices, and, when necessary, perform lead hazard reevaluations;



Note: In cases of environmental intervention blood lead level⁵⁰ in a child under 6 years old:^{clxiii}

- Within 15 days after a medical health care provider notifies the PHA that a child under 6 years old has an EIBLL, the PHA shall complete a risk assessment (or obtain the public health department's risk assessment report) of the child's dwelling unit and common areas servicing the unit.
- Within 30 days after the risk assessment, the PHA shall control the lead-based paint hazards, and notify residents in affected units of any lead evaluation or hazard control work within 15 days after it is done.
- If the risk assessment identifies lead-based paint hazards but previous evaluations of the building had not, the PHA shall conduct a risk assessment of other units and conduct interim controls of the hazards within 30 days.
- The PHA shall report the name and address of the child:
 - To the HUD field office and
 - To the public health department within 5 working days of being notified by any other medical health care professional.
- To make necessary repairs to the dwelling unit;
- To keep project building, facilities, and common areas, not otherwise assigned to tenant for maintenance and upkeep, in a clean and safe condition;
- To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;
- To provide and maintain appropriate receptacles and facilities (except container for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with 24 CFR § 966.4 (f)(7);
- To supply running water and reasonable amounts of hot water and reasonable amount of heat at appropriate times of the year according to local custom and usage; except where the building that includes the dwelling unit is not required to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection;
- To notify the tenants of the specific grounds for any proposed adverse action by PHA. (Adverse action includes, but is not limited to: a proposed lease termination, transfer of the tenant to another unit, change in amount of rent, imposition of charges for maintenance and repair, or for excess consumption of utilities.) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

⁵⁰ 20 micrograms of lead per deciliter of blood, or two measurements of 15 or higher taken at least 3 months apart.



- The notice of the proposed adverse action shall inform the tenant of the right to request such hearing.^{clxiv} In the case of lease termination, a notice of lease termination that complies with 24 CFR § 966.4(1)(3) shall constitute adequate notice of proposed adverse action.
- In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time to request such a hearing has expired or (if hearing was timely requested) the grievance process has been completed.^{clxv}

Tenant's Obligations (24 CFR § 966.4 (f))

The tenant's obligations, as stated in 24 CFR Part 966 are:

- Not to assign the Lease, or sublet the dwelling unit.
- Not to provide accommodation to boarders or lodgers.

Note: Not to be confused with visitors and guests, roomers and lodgers shall neither be permitted to occupy a dwelling unit, nor shall they be permitted to move in with any family occupying a dwelling unit. Violation of this provision is ground for termination of the lease.

- To use the dwelling unit solely as a private dwelling for tenant and tenant's household as identified in the Lease, and not to use or permit its use for any other purpose.
- To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well being of the housing project and tenants. These regulations shall be posted in a conspicuous manner in the project office and incorporated by reference in the residential Lease.^{clxvi}
- To comply with the requirements of applicable state and local building or housing codes, imposed on tenants materially affecting health and safety.
- To keep the dwelling unit and other such areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.
- To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner.
- To use only in reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appurtenances including elevators.
- To refrain from, and to cause household and guests to refrain from destroying, defacing, damaging, or removing any part of dwelling unit or project.
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, project buildings, facilities, or common areas caused by the tenant, household members or guests.



- To act, and cause household members or guests to act in a manner that will not disturb other tenants' peaceful enjoyment of their accommodations; and will be conducive to maintaining all PHA's projects in a decent, safe, and sanitary condition.
- To assure that no tenant, no member of the tenant's household, or guest, engages in:
 - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
 - Any drug-related criminal activity on or off the premises; or
- To assure that no other person under the tenant's control engages in:
 - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
 - Any drug-related criminal activity on or off the premises;
- To assure that no member of the household engages in abuse or pattern of abuse of alcohol that affects the health, safety, or the right to peaceful enjoyment of the premises by other tenants.

For the purposes of subparts A and B of this part, the term drug-related criminal activity means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substance Act).

Tenant Maintenance (24 CFR § 966.4 (g) and 24 CFR § 35.1350)

PHAs should indicate any maintenance tasks that are to be performed by the tenant.

Note: The PHA may not shift its maintenance responsibilities to tenants, but if customary in the PHA's locality, it is reasonable to expect able-bodied tenants to keep grass mowed, rake leaves or shovel snow. PHAs are required to exempt tenants who are unable to perform such tasks because of age or disability.

Some PHAs charge tenants who are not able to perform tasks listed in the lease. If the tenants are exempt because of age or disability, the PHA may not charge them for performing this work.

If PHAs have tenants perform maintenance tasks that may involve disturbing lead-based paint or cleaning up lead-based paint debris, they should be aware of the requirement for 1-day training in lead safe work practices for tenants who do the work, just as the requirement applies to staff.^{clxvii}

Lead safe work practices include the prohibition of certain methods of paint removal, worksite preparation measures, occupant protection, and specialized cleaning. PHAs can coordinate with local education organizations, such as community colleges and vocational training institutions, to facilitate the training of tenants (and staff) who do this maintenance work. (See also the HUD-sponsored Lead Listing, at www.leadlisting.org, for training availability.)

**Defects Hazardous to Life, Health or Safety (24 CFR § 966.4 (h) and 24 CFR § 35.1345 (a))**

The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants. PHAs are required to either make repairs to such conditions within a reasonable period of time or to abate the situation (usually by moving the tenant's family). If the tenant caused the defect, the tenant may be charged for the cost of the repairs. If the damage creates conditions that might expose the residents to lead-based paint hazards, the PHAs must take additional steps to ensure their safety while repairs are being made (e.g., barring the worksite or temporarily relocating the residents).^{clxviii}

If the PHA cannot make repairs quickly (because, for example, a part is needed that the PHA cannot obtain), the PHA must offer the tenant a "replacement dwelling unit", if available.^{clxix} In some situations the defect to the premises is so serious that the replacement dwelling unit is a Section 8 voucher or a motel unit. In this section of the lease, the tenant agrees to accept any replacement unit offered by the PHA. (Remember, though, that if lead-based paint hazards are being controlled in the family's unit, the temporary unit must be free of such hazards.)

If the PHA can neither repair the defect nor offer alternative housing, the PHA must abate the rent for the unit in proportion to the seriousness of the damage and loss in value as a dwelling. The PHA need not offer rent abatement if the tenant has refused alternative housing or caused the damage (24 CFR § 966.4 (h)(4)).

Finally, if the danger caused by the unit's condition is severe (the PHA cannot repair it and the alternative accommodations are not provided), the lease is terminated and any rent paid for the month is returned to the tenant, except no abatement if tenant rejects alternating accommodations or if the damage was caused by tenant, household or guests.

Note: PHAs should be aware of state or local law abatement remedies that may apply in these situations.

Pre-Occupancy and Pre-Termination Inspections (24 CFR § 966.4 (i))

The HUD rules require every PHA to inspect a unit prior to move-in and at move-out. The PHA and the tenant or tenant's representative must inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA must give the tenant a written statement of the condition of the dwelling unit and its equipment, which must be signed by the PHA and tenant and placed in the tenant's file. The tenant must be permitted to participate in the move-out inspection if he/she wishes, unless the tenant has already moved (or "skipped") out. The difference between the condition of the unit at move-in and at move-out



establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

Note: Many PHAs take photographs of every room during the move-in inspection and file the photos along with the inspection report.

Entry of Dwelling Unit During Tenancy (24 CFR § 966.4 (j))

Public housing tenants have the same privacy rights as tenants of other housing. The PHA cannot enter a tenant's unit except for specific reasons (described in the lease). Except for emergencies, the PHA must give at least two days' notice.^{clxx} The Part 966 rule expressly permits PHAs to enter tenants' units (after giving notice) to:

- Perform routine inspections and maintenance;
- Make improvements or repairs; or
- Show the unit for re-leasing.

The PHA may enter a unit at any time without notice if there is reasonable cause to believe an emergency exists (e.g., smell of gas, or water running out from under the door).

Note: This section of the rule does not authorize PHAs or police departments to enter units for security purposes unless the police department has a search warrant or they are in hot pursuit of a suspect who has run into the unit. Tenants cannot be asked to waive their Fourth Amendment rights.

If no adult members of a tenant's household are at home when PHA staff enters a unit, staff must leave a notification for the tenant about the date, time and purpose of the entry.^{clxxi}

Note: Many PHAs have a clause in their leases that "request for maintenance constitutes permission to enter the unit." This simplifies maintenance delivery and reduces lost staff time in trying to connect with tenants who are in and out.

Notice Procedures (24 CFR § 966.4 (k) and 24 CFR § 35.1110)

The lease must specify the methods to be used for PHA-tenant communications. Typically, mail sent prepaid by first class is acceptable, although many PHAs use certified mail for certain communications in order to have a receipt to demonstrate proof of attempted service. In addition, if permitted under state law, PHAs may post notices on tenants' front doors, or deliver written notices, in person, to an adult household member.



The PHA must inform applicants about the dangers of lead-based paint using the Lead Hazard Information Pamphlet. In addition, PHAs must inform residents about any lead evaluation or lead hazard reduction work by distributing the appropriate notice to affected units or posting it in a public area, such as the mailroom. There is a 15 day period for providing a:

- Notice of evaluation after evaluating a unit, unit, common areas, or exteriors if lead-based paint or lead-based paint hazards are found;
- Notice of presumption after presuming that there is lead-based paint or a lead-based paint hazard rather than conducting an evaluation; and
- Notice of lead hazard reduction after conducting lead hazard reduction work (e.g., abatement, interim controls, or standard treatments).

If the tenant is visually impaired, all notices must be in an accessible format.^{clxxii}

Termination of Tenancy and Eviction (24 CFR § 966.4 (l)) Grounds for Termination

The PHA may terminate the tenancy only for serious or repeated violation of material terms of the lease, such as the following:

- Failure to make payments due under the lease;
- Failure to fulfill household obligations as described in 24 CFR § 966.4(f);
- Other good cause. Other good cause includes but is not limited to:
 - Discovery after admission of facts that made the tenant ineligible;
 - Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;
 - Failure of a family member to comply with community service requirement provisions (this is grounds for nonrenewal of the lease and termination of tenancy only at the end of the twelve-month lease); and
 - Failure to accept the PHA's offer of a lease revision to an existing lease (so long as the revision is on a form adopted by the PHA in accordance with regulation, with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect and with the offer specifying a reasonable time limit within the period for acceptance by the family).
- PHA termination of tenancy for criminal activity or alcohol abuse:
 - The PHA must immediately terminate tenancy if the PHA determines that any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing (lease termination is required by HUD);^{clxxiii}



- The lease must provide that drug-related criminal activity engaged in, on, or off the premises by any tenant, member of the tenant's household or guest, or other person under the tenant's control is grounds for the PHA to terminate tenancy;^{clxxiv}
- The lease must provide that the PHA may evict a family when the PHA determines that a household member is illegally using a drug or when a pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other tenants;^{clxxv} and
- The lease must provide that criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.^{clxxvi}
- The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has.^{clxxvii}
 - Engaged in alcohol abuse or a pattern of alcohol abuse that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants; or
 - Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.
- The lease may provide that the PHA may terminate the lease if:
 - A tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a felony (or, in New Jersey, a high misdemeanor) or a violating a condition of probation or parole imposed under State or Federal law; or
 - The PHA determines that the covered person has engaged in the criminal activity regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

Lease termination notice: The lease must describe the procedures used by the PHA and the tenant to terminate tenancy.^{clxxviii} The PHA must give written notice of lease termination of:^{clxxix}

- 14 days in the case of failure to pay rent;
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days) if the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or if any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or if any member of the household has been convicted of a felony;
- 30 days in any other case, except that if the State or local law allows for a shorter notice period, such shorter period shall apply (This is the notice requirement that would apply to lease termination for such lease violations as failure to comply with reexamination requirements, refusal to accept a mandatory transfer, or failure to pay charges in addition to rent).



The PHA's notice of lease termination must inform the tenant of the specific grounds for lease termination (citing the specific lease provision violated and the manner in which the tenant violated it). Further, the notice must inform the tenant of the tenant's right to make a reply to the lease termination notice, and to examine any documents directly relevant to the lease termination or eviction.^{clxxx}

Note: There may be additional requirements for a Lease Termination Notice or Notice to Vacate under the state's landlord-tenant law, in addition to these requirements.

The lease termination notice must state if the tenant is entitled to a grievance hearing.^{clxxxi} The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the Notice of Lease termination.

If the tenant is permitted to request a grievance hearing, the PHA may not terminate the lease until the time period to request such a hearing has expired, or, if the grievance hearing is requested in a timely manner, until the grievance process has been completed.

If the tenant is not eligible for a grievance hearing (in a due process state where the PHA has elected to exclude from the grievance procedure, grievances related to lease terminations for criminal activity or drug-related criminal activity), the notice of lease termination must state that the tenant is not entitled to a grievance hearing,^{clxxxii} specify the judicial eviction procedure the PHA will use, state that HUD has determined that this judicial procedure complies with the basic elements of due process, and state the grounds for lease termination under which the grievance process is denied.

The PHA may evict the tenant by judicial action for criminal activity in accordance 24 CFR § 966.4 if the PHA determines that a covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for criminal conviction.

How a tenant is evicted: A PHA may evict a tenant from the unit either by:

- Bringing a court action; or
- Bringing an administrative action if the jurisdiction permits eviction by administrative action, but only after the tenant is afforded a pre-eviction hearing in accordance with the PHA's grievance procedure.
- A PHA may evict for criminal activity by judicial action if the PHA determines that the covered person has engaged in criminal activity, regardless of whether the person has been arrested or convicted of criminal activity and without satisfying the standard of proof used for a criminal conviction.



Note: For a criminal conviction the standard of proof is "beyond a reasonable doubt", while for civil cases, such as evictions, the standard of proof is based on "the preponderance of the evidence". Note that a PHA cannot simply allege that criminal activity has occurred, however. Some sort of evidence will be required. For example, if the PHA claims that drug-related criminal activity has occurred, proof that illegal drugs were involved will be needed (typically testimony by a medical examiner or forensic laboratory), as well as some proof tying the sale, possession, use, manufacture etc. of the drugs to the tenant being evicted.

PHA discretion to consider circumstances: When deciding whom to evict for criminal activity, PHAs have the choice to consider (or not) all the circumstances of a case, including the seriousness of the offense, whether family members knew or participated in the offense, and the effect the eviction will have on family members not involved in criminal activity. The PHA may require a tenant to exclude a member as a condition of continuing to remain in the unit. The PHA may also require a member who faces termination for illegal drug use to demonstrate that he/she has been rehabilitated.

Note: The discretion to consider circumstances does not impose a new procedure on PHAs. They may or may not choose to consider circumstances.

Notice to Post Office: Whenever a PHA evicts an individual or family from public housing for criminal activity or drug-related criminal activity, the PHA is required to notify the local post office serving the dwelling unit, that the person is no longer residing in the unit.^{clxxxiii}

Note: The purpose of this provision is to avoid giving an evicted family an excuse for being back on the property.

Use of criminal record (24 CFR § 966.4 (l)(5)(iv)): If the PHA, in terminating a lease for criminal activity, relies on a criminal record, the PHA must notify the tenant of the proposed action, and must provide the tenant and the subject of the record with a copy of the criminal record before a PHA grievance hearing or court trial. The tenant must be given the opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

Cost of obtaining criminal record (24 CFR § 966.4(l)(5)(v)): The PHA may not pass along to the tenant the cost of a criminal records check.

PHA actions, generally: The PHA should document its activity and take into account the importance of eviction of tenants involved in criminal activity to public housing communities and program integrity, and the demand for assisted housing by families who would adhere to a lease responsibilities.

**Eviction: Right to Examine PHA Documents Before Hearing or Trial (24 CFR § 966.4 (m))**

As mentioned above, a lease termination notice must inform the tenant that he has the right at any time, to review and copy (at his expense) any documents or regulations upon which the PHA is relying that are directly relevant to the lease termination or eviction.

Grievance Procedures (24 CFR § 966.4 (n))

The lease must state that any disputes between the PHA and the tenant about the obligations of the tenant or the PHA shall be resolved in accordance with the PHA's Grievance Procedure. The Grievance Procedure must conform to the requirements of Subpart B of Part 966.

Provision for Lease Modification (24 CFR § 966.4 (o))

Modifications to the lease require a written rider signed by the PHA and tenant except for Notifications of Rent Adjustment pursuant to annual or interim reexaminations or charges in addition to rent and other charges on posted schedules.

Signature Clause

The lease should provide a signature clause for execution by the PHA and tenant. Many PHAs require all adult household members to execute, or sign, the lease.

17.7 Posting of Policies, Rules and Regulations (24 CFR § 966.5)

All schedules of charges in addition to rent, rules and regulations (e.g., house rules, maintenance charges, lock-out charges, utility allowances, excess utility charges, etc.) must be posted in a conspicuous location in each development office.

These schedules may be revised from time to time. Because they are made a part of the lease by reference, when revised they must be provided to tenants and tenant organizations for thirty days for comment before adoption. The PHA must notify tenants before such a revision, explain the reason for the revision and inform tenants that they have thirty days to make written comments. The PHA may either deliver or mail the notice to each tenant or post it in at least three conspicuous places in each structure or building where effected dwelling units are located and in the development office.



17.8 Accommodation of Persons with Disabilities (24 CFR § 966.7)

A PHA must provide reasonable accommodations to applicants and tenants with disabilities in every aspect of occupancy, as needed to ensure that every tenant has an equal opportunity to use and occupy the property.

Further, the PHA must notify tenants that they may, at any time during their tenancy, request a reasonable accommodation of a household member with a disability, including a reasonable accommodation to enable the tenant or household member to comply with the lease.

Note: Another way to think of this requirement is to consider whether some reasonable accommodation would make it possible for a tenant with a disability to be lease compliant when issues of lease violations arise. For example, if a visually impaired tenant has difficulty keeping her unit as clean as is needed for health and sanitation, the PHA may discuss the matter with the tenant and then make a referral to a Chore Service, mention the problem to the tenant's designated contact, or contact a social service agency before initiating lease enforcement.



PART 6: PUBLIC HOUSING GRIEVANCE PROCEDURE



Chapter 18. The Grievance Procedure

18.0 Overview

The grievance procedure is an administrative method prescribed by HUD to deal with resident complaints. PHAs are required to have grievance procedures that meet the regulatory requirements set forth in 24 CFR § 966.50-57. The grievance procedure is a part of the PHA's lease, by reference. This chapter provides guidance on the elements of the grievance process and what should be included in a PHA's grievance procedure.

A grievance is any dispute that a tenant may have with respect to PHA action or failure to act in accordance with the lease or regulations that adversely affects the individual tenant's rights, duties, welfare or status. Thus, potential grievances could address most aspects of a PHA's operation, and each PHA must be familiar with the grievance rules and the PHA's own grievance procedure.

Appendix V contains a sample grievance procedure.

18.1 Applicability (24 CFR § 966.51)

The grievance procedure must contain a statement of applicability, in which the PHA describes the situations for which the grievance procedure is not applicable. The grievance procedure is applicable only to individual tenant issues relating to the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination and the PHA is terminating the lease through the judicial eviction procedures for which HUD has issued the due process determination, there are three types of terminations that are not subject to the grievance procedure. These are terminations for:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
- Any violent or drug-related criminal activity on or off such premises; or
- Any criminal activity that resulted in felony conviction of a household member



In states without due process determinations, PHAs may use expedited grievance procedures⁵¹ to deal with the above three categories of lease terminations.

18.2 Due Process Determinations by HUD (24 CFR § 966.51 (a)(2))

A judicial eviction or lease termination process in a state or local court shall be considered to include the elements of due process if the following procedural safeguards are required:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have; and
- A decision on the merits.

18.3 Informal Settlement (24 CFR § 966.54)

The first step in the grievance process (other than an expedited grievance procedure as described above) is to attempt an informal settlement. Grievances always originate with a resident, who may present the grievance initially either orally or in writing. The grievance procedure must state where grievances will be accepted (central office or site office or both) and should state how long after the grievable event the tenant has to file the grievance.

At the informal stage, the grievance first should be reviewed to ensure that the grievance is not a matter excluded from the grievance process. Then the grievance may be referred to the department or office responsible for the activity being grieved. The tenant should be contacted and a meeting arranged at a mutually agreeable time.

The grievance procedure should state how long the PHA and tenant have to set the meeting (usually ten working days). At the informal hearing, the tenant will present the grievance and the PHA staff person responsible for the area will attempt to settle the grievance.

Within a reasonable amount of time specified in the grievance procedure (usually five working days) the PHA must provide the tenant with a written summary of the informal hearing. The summary must

⁵¹ Expedited grievance procedures typically eliminate the informal hearing and compress all dates (e.g., from ten working days to three working days)



include the names of the participants, the date(s) of the meeting(s), the nature of and the reasons for the proposed disposition, and the procedures for obtaining a formal hearing if the complainant is not satisfied. A copy of the summary must be placed in the tenant's file.

Some PHAs have different methods for handling informal hearings that involve allegations of discrimination or harassment than for disputes about PHA operations.

18.4 Formal Grievance Hearing (24 CFR § 966.55 (a))

The PHA's grievance procedure must state that if the complainant (the tenant filing the grievance) is not satisfied with the results of the informal hearing, the complainant must submit a written request for a formal grievance hearing within a reasonable amount of time (usually five days after receipt of the summary of the informal hearing). The procedure also must state where the request will be accepted (central office or site office). The procedure must state that the written request for a formal grievance hearing should include:

- The reason(s) for the grievance; and
- The action sought from the PHA.

In addition, the procedure may require that the written request specify several dates and times when the complainant can attend a grievance hearing.

If the complainant does not request a formal hearing within the timeframe specified in the grievance procedure, the decision made during the informal hearing becomes final, unless the tenant can show good cause why s/he failed to request a formal hearing in accordance with the grievance procedure.

Failure to request a formal hearing, however, does not affect the tenant's right to a court hearing on the matter.

18.5 Selecting the Hearing Officer or Hearing Panel (24 CFR § 966.5 (b))

The formal grievance hearing must be conducted by an impartial person or persons appointed by the PHA. It cannot be conducted by the person who made or approved the PHA's original action (the action being grieved) or a subordinate of that person. PHAs must avoid selecting a hearing officer or hearing panel who may be a friend (or an enemy) of the complainant, have some personal stake in the matter under dispute, or may have an appearance of a lack of impartiality.



The method of selecting hearing officers or hearing panels must be included in the PHA's grievance procedure. The PHA must choose from one of the following methods:

- A method approved by the majority of tenants (in a building, group of buildings or development, or a group of developments to which the method will apply) voting in an election or meeting of tenants held to select the method; or
- Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the grievance procedure.

The PHA must consult with resident organizations before the PHA appoints individuals as hearing officers or hearing panel members. Comments from the resident organizations must be considered before making the appointment.

Often, PHAs will provide resident organizations with a slate of potential hearing officers or hearing panel members. Once the comments have been received and considered, nominees are informed that they are the PHA's official grievance hearing committee and the PHA can select members in random order to serve as hearing officers or hearing panel members. Occasionally a member of the official grievance hearing committee may be called to hear a grievance in which he or she is involved, either personally or professionally. When this occurs, the committee member should ask to be excused from hearing that particular grievance. Any grievance hearing committee member who does not request to be removed in such a situation may be removed from the committee.

18.6 Escrow Deposits (24 CFR § 966.5 (e))

If a grievance involves the amount of rent payable by the tenant that the PHA claims is due, the complainant must pay an escrow deposit to the PHA. The amount placed in escrow by the tenant is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the act or failure to act occurred. After the first deposit, the family must deposit the same amount monthly until the grievance is resolved by decision of the hearing officer/panel. Failure to make the escrow deposit terminates the grievance procedure, but does not waive the tenant's right to contest the action in an appropriate judicial proceeding.

The PHA must waive this requirement if the tenant is paying minimum rent and the grievance is based on a request for hardship exemption or imputed welfare income.



18.7 Scheduling Hearings (24 CFR § 966.55 (f))

The PHA's grievance procedure must specify the reasonable time in which the hearing must be held (usually within ten working days of receiving the request for a formal hearing). A written notification specifying the time place and procedures governing the hearing must be delivered to the complainant and appropriate PHA officials.

If the PHA uses a hearing panel method, and only one panel member is available to meet on all dates named by the complainant, the grievance procedure may state that the single panel member shall serve as the hearing officer. This is an important policy to ensure that the grievance process does not drag on too long.

18.8 Procedures Governing the Hearing (24 CFR § 966.56)

Complainants must be afforded a fair hearing. A fair hearing includes the following elements:

- The opportunity to examine any PHA documents before the hearing, including records and regulations that are relevant to the hearing;
- The tenant may copy documents relevant to the hearing at the tenant's expense;
- Any documents not made available upon request of the tenant may not be used in the course of the hearing;
- The right to be represented by counsel or other person chosen as the tenant's representative. The counsel or tenant's representative may make statements on the tenant's behalf;
- The right to a private hearing unless s/he requests a public hearing;
- The right to present evidence and arguments in support of the complaint, to controvert evidence relied on by the PHA, and to confront and cross-examine all witnesses upon whose testimony or information the PHA relies; and
- A decision based solely and exclusively upon the facts presented at the hearing.

The hearing panel or officer may render a decision without proceeding with the hearing, if it is determined that the issue was previously decided in another proceeding.

At the hearing, the tenant first must demonstrate that she or he is entitled to the relief sought and the PHA must justify its action or failure to act on the issue on which the grievance was filed.

The hearing should be conducted informally, with both oral and written evidence being permitted. While the hearing is conducted informally, all participants, including the PHA, complainant, counsel and



spectators must conduct themselves in an orderly fashion or the hearing officer/panel may exclude the disorderly party from the proceedings and grant or deny relief as appropriate. The rules of evidence of a judicial proceeding do not apply to the grievance hearing.

Both the PHA and the complainant should provide the Hearing Officer with specific information on the regulation or policy on which the PHA based its action or demonstrates the PHA's failure to act. Either the complainant or the PHA may arrange, in advance, for a transcript of the hearing to be made. The cost of the transcript will be paid by the party requesting the transcript. Any person may purchase a copy of the transcript.

PHAs are reminded that they are required to provide reasonable accommodation for persons with disabilities to participate in hearings. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations or attendants.

The PHA's grievance procedure must state that if either the complainant or the PHA fails to appear at the scheduled hearing, the hearing officer/panel may postpone the hearing for not more than five working days or may decide that the absent party has waived the right to a hearing (although the complainant has not waived the right to a judicial proceeding).

18.9 Decision of the Hearing Officer or Panel (24 CFR § 966.57)

The hearing panel/officer is required to issue a written decision within a reasonable time following the hearing (usually ten working days). The decision must state the reason(s) for the decision. A suggested format for a written decision is:

- **Introduction:** Include the name of the complainant, name(s) of the hearing officer/panel, date, time and location of hearing, name of other participants, including counsel or complainant's representative and witnesses. Include a brief summary of the grievance (preferably quoting the complainant's letter requesting the hearing). Also include the date on which the informal hearing was held, who held the informal hearing, and summarize the results of the informal hearing (preferably quoting the summary letter). Include the date on which the complainant requested a hearing.
- **Hearing summary:** Summarize the oral and written evidence presented by both the complainant and the PHA.
- **Decision:** In making the determination, the Hearing Officer/Panel should cite the policy or regulation provided by the complainant or the PHA that supports the decision made.



A copy of the decision must be placed in the tenant's file and an additional copy (with the names and dates redacted, or edited out) must be retained by the PHA and be made available for a prospective complainant, the complainant's representative, or hearing officer/panel.

The decision is binding on the PHA, which must take the action or refrain from taking the action cited in the decision, unless the PHA's Board of Commissioners determines within a reasonable time (usually ten working days) and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affect the complainant's rights, duties, welfare or status; or
- The decision of the hearing officer/panel is contrary to Federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

A decision by the hearing officer/panel or Board of Commissioners in favor of the PHA's action or failure to act or which denies the relief requested in whole or in part does not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.

18.10 Reasonable Accommodation in the Grievance Procedure

PHAs are reminded that they are required to provide reasonable accommodation for persons with disabilities throughout the grievance process. This includes, but is not limited to, accommodating tenants with disabilities by accepting grievances at alternate sites or by mail, having PHA staff reduce an oral request for a grievance to writing, for a tenant with a disability who cannot write due to his or her disability, and providing accommodations in the grievance hearing itself by providing qualified sign language interpreters, readers, accessible locations or attendants.



PART 7: DOMESTIC VIOLENCE



Chapter 19. Domestic Violence

19.0 Overview

The pervasiveness and seriousness of domestic violence has illuminated it as an issue of national importance. Domestic violence knows no race, gender, or nationality and its impact on the lives of its victims can be devastating. In many instances, victims of domestic violence suffer not only the physical abuse, but also the devastation of being displaced from their homes. As a result, affordable housing issues become a serious consequence of domestic violence. HUD and Congress have recognized the need for the provision of affordable housing for victims of domestic abuse and have taken measures to address this issue. In the Quality Housing and Work Responsibility Act of 1998, Section 514(e), Congress stated:

"It is the sense of Congress that, each public housing agency involved in the selection of eligible families for assistance under the United States Housing Act of 1937 (including residency in public housing and tenant based assistance under Section 8 of such Act) should, consistent with the public housing agency plan of the agency, consider preferences for individuals who are victims of domestic violence."

HUD strongly encourages PHAs to meet this challenge and has demonstrated its commitment to victims of domestic violence in a number of ways. In its initial guidance related to preferences for victims of domestic violence, HUD urged PHA's to consider adopting admission preferences for victims of domestic violence. (See 64 Fed Reg 8200, Feb. 18 1999 and 24 C.F.R § 960.206(b)(4) stating, "PHAs should consider whether to adopt a local preference for admission of families that include victims of domestic violence.")

As a result of these policies, PHAs have become more aware of the consequences of domestic violence-related tenancy and have sought to implement a multitude of solutions to address challenges posed by domestic violence situations. HUD continues to strongly encourage PHAs to exercise discretion in determining if domestic violence-related evictions are warranted as well as utilizing various tools, such as policies designed to transfer victims and address absences from public housing units. In addition, HUD strongly encourages PHAs to participate in ongoing dialogues with domestic violence providers and advocates, law enforcement agencies and non-profit organizations to develop coordinated solutions that respond to this problem.

This chapter is intended to establish a framework for the relationship between public housing agencies, victims of domestic violence who reside in public housing, and the domestic violence providers who may facilitate measures PHAs can employ to combat the problem. Illustrations of remedies/tools that are being



implemented by many public housing agencies will be offered in this chapter as a way of sharing best practices that other PHAs may wish to consider.

19.1 Why A Domestic Violence Preference

Domestic violence, as defined by HUD, is the “actual or threatened physical violence directed against one or more members of the applicant’s family by a spouse or other members of the applicant’s household.” In most instances victims of domestic violence are made powerless by the abuse. As such, the inability of victims to access and maintain housing that is decent and safe becomes a consequence of the abuse. Allowing preferences for victims of domestic violence creates alternatives for assisting those who may otherwise remain in an abusive situation or become homeless because of the need to flee the abuse. Under the guidance of 24 CFR § 960.206, PHAs may establish such preference policies based on local needs and priorities as determined by the PHAs.

19.2 Types of Evidence Required as Proof of Domestic Violence

Under existing HUD statutes and regulations, PHAs may already consider the nature and severity of each offense, and exercise discretion on whether or not household members or their guests may threaten the health, safety, or right to peaceful enjoyment of the premises by others. Currently, public housing agencies may consider: 1) the effects of termination of assistance on other family members who were not involved in the offense, and 2) conditions barring the culpable household member from residing or visiting the unit. PHAs may already consider the circumstances relevant to an eviction or termination of tenancy based on the extent to which the person has shown personal responsibility to prevent the offending action, and the time that has elapsed since their arraignment for that crime.

PHAs are encouraged to exercise its discretionary authority in accepting a broad range of evidence as proof of domestic violence. This evidence may include, but is not limited to:

- A domestic violence victim’s statement, testimony or affidavit outlining the facts of the violence or cruelty in each incident. The statement should include a listing of the approximate dates when each incident occurred, discussion of the applicant’s fears and injuries and the effect that each abusive incident has had on the applicant and her/his family.
- Restraining or civil protection orders.
- Medical records.



- Police reports, records of telephone calls or visits to the victim's address. This may include telephone calls to the police registering a complaint, a log of police runs made to the residence, copies of all tapes and reports written by officers responding to a call.
- Criminal court records if a batterer was arrested or convicted of any act of domestic violence or destruction of property relating to the victim (certified copies); a victim's own statement to police or prosecutors, which can be obtained from the prosecutor's office.
- Statements of workers from a domestic violence shelter or other domestic violence programs attesting to the time the victim spent in the shelter and the reason as linked to incidents of abuse.
- Statement from counselors, if victim attended counseling.
- Reports, statements from police, judges and other court officials, clergy, social workers and other social service agencies.
- Other credible evidence as corroborated by law enforcement or domestic violence providers.

19.3 Screening and Admission

PHAs may screen families on the basis of their family behavior and suitability for tenancy. In doing so, a PHA may consider an applicant's previous rental and tenancy history, as well as past criminal activity. In an attempt to ascertain whether domestic violence was a factor in the poor rental and tenancy history or criminal activity, staff should be encouraged to exercise discretion and inquire about the circumstances that may have contributed to the negative reporting. If the PHA determines that the negative reporting was a consequence of domestic violence against the applicant, the PHA may exercise discretion and approve admission pursuant to its Admissions and Continued Occupancy Plan (ACOP).

PHAs should also be cognizant of a victim's need to feel safe and as a result, she/he may be apprehensive about providing certain requested information such as current and previous address. In such cases, PHA staff should consider alternatives to verifying suitability. In other instances, victims may have undergone a change in identity. Again, PHAs may want to consult with domestic violence providers to obtain guidance on appropriate types of identification. Beyond policies related to admissions and occupancy, PHAs, as a standard policy, should provide linkages and referrals to victims of domestic violence to appropriate counseling and law enforcement entities.

19.4 Continued Occupancy and Transfer Policies

Issues related to the continuation of benefits are more often complicated by the fact that victims of domestic abuse may be evicted for the acts of their abuser. PHAs may assist these victims in avoiding their abusers and continuing occupancy in public housing by adopting a special transfer policy that takes into account the victim's circumstances.



A special transfer policy would assist victims, who are seeking to flee their abusers, in accessing and maintaining stable housing separate and apart from their abuser. In this instance, PHAs may adopt a transfer policy that includes a preference for victims of domestic violence who wish to move to other neighborhoods or even other jurisdictions. One tool PHAs may choose to use is the issuance of a voucher to the victimized family. PHAs may apprise victims of the availability of vouchers as an option to accessing affordable and stable housing.

19.5 Eviction and Termination

While public housing screening and eviction statute allows PHAs to evict households for any criminal activity by a member of the family or a guest that threatens the health, safety or right to peaceful enjoyment of other residents, PHAs are encouraged to carefully review circumstances where victims of domestic violence may be evicted due to circumstances beyond their control. PHAs may exercise their discretionary authority in these cases and remove the perpetrator from the household, while allowing the victim to remain in occupancy of the unit. PHAs may also exercise its discretion in situations where it has been determined that the circumstances warrant an action other than removal of the perpetrator from the unit such as requiring the perpetrator to participate in a domestic violence prevention program. HUD strongly encourages PHAs to consider alternatives to eviction where appropriate.

Public housing agencies that exercise their discretion in determining if eviction is appropriate effectively demonstrate that they consider the safety and well-being of victims of domestic violence as well as the health, safety and peaceful enjoyment of other residents who may be affected by incidents of domestic violence. Again, as previously stated, PHAs should, as a standard policy, provide linkages and referrals to victims of domestic violence to appropriate counseling and law enforcement entities.

For mixed families, (defined as a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status), instances of domestic violence/abuse are complicated by HUD restrictions on assistance to noncitizens who have ineligible immigrant status. In these cases, PHAs may refer immigrant victims to agencies that can offer immigration relief and counsel the victim on steps to obtaining eligible status. For victims who are in the process of obtaining qualified alien status, PHAs may provide for a subcategory of preference for immigrant victims to apply to public housing.

19.6 Tools PHAs May Use

- Barring the culpable perpetrator from the unit or PHA development.
- Establishing “no trespass” list for those that have been banned from the unit or PHA development.



- Establishing a relationship with local law enforcement to make unscheduled home visits to the victim's public housing unit. Victims voluntarily submit their names to the list and authorize unscheduled home visits as a way of deterring the perpetrator.
- Donating old cell phones to victims to assist in cases of emergency.

19.7 Best Practices

The following are examples of PHA programs currently assisting victims of domestic violence:⁵²

- A PHA formed a collaborative partnership with a domestic violence service provider to create an on-site program that provided residents with a timely, safe and effective means of alleviating domestic abuse through direct services, education, information and referrals. The training of PHA staff and the support of an established presence at the public housing community have enabled the PHA to take a strong stand against domestic abuse in the community;
- A PHA developed a partnership with family advocacy coalitions, police, prosecuting attorneys, mental health, on-site medical professionals and others to reduce domestic violence and child abuse within a public housing community. The family advocacy coalition works with the PHA to train staff and residents so they can work together to educate and prevent domestic violence and child abuse;
- A PHA has a Community Policing to Combat Domestic Violence program which monitors the long term effects of domestic violence and provides victims immediate links to support services;
- A PHA formed a partnership with a domestic violence shelter, which included an outreach worker, a counselor, and a case manager. This led to numerous tenants availing themselves of the services and has enabled them to move out of abusive situations and begin again;
- A PHA provides a transitional home for battered women recovering from domestic violence - 95 percent of whom are now housing authority residents. Some participate in their Family Self-Sufficiency (FSS) program;
- A PHA encouraged the participation of social service providers, and converted 18 public housing units into space to be used for social services as well as formed a Safety Action Team with the police department to enforce trespassing laws; and

⁵² Information provided from a survey conducted by the National Association of Housing and Redevelopment Officials (NAHRO).



- A PHA developed a facility to shelter victims of domestic violence, with 27 shelter beds and ample space for providing program services. Through these collaborative efforts, the community has become better informed and more supportive of victims of domestic violence.



Endnotes

- i 24 CFR § 960.206 (e)(2)
- ii 24 CFR § 960.253 (a)(1)
- iii 24 CFR Part 35, subpart A
- iv 24 CFR § 8.32 (a-e)
- v 24 CFR § 903.7 (o)
- vi 24 CFR § 108.25 (c)(4)
- vii 24 CFR § 100.204 (a)
- viii 24 CFR § 8.23 (b)
- ix 24 CFR § 8.22 (b)
- x 24 CFR § 8.22 (b)
- xi 24 CFR § 107.30 (a)
- xii 24 CFR § 100.24 (a)
- xiii 24 CFR § 9.131 (c)
- xiv 24 CFR § 9.131 (c)
- xv 24 CFR § 100.24 (a)
- xvi 24 CFR § 100.24 (a)(b)
- xvii 24 CFR § 960.203 (c)
- xviii 24 CFR § 960.201 (a)
- xix 24 CFR § 5.611 (3)(ii)
- xx 24 CFR § 5.506 (a)(1)(2)(b)
- xxi 24 CFR § 5.508 (c)(d)
- xxii 24 CFR § 982.206 (a)(1)(2)
- xxiii 24 CFR § 982.206 (b)(2)
- xxiv 24 CFR § 903.7 (2)
- xxv 24 CFR § 903.7 (2)(i)
- xxvi 24 CFR § 903.7 (2)(ii)
- xxvii 24 CFR § 903.7 (2)(iv)
- xxviii 24 CFR § 903.7 (2)(v)
- xxix 24 CFR § 903.7 (2)(A)
- xxx 24 CFR § 903.7 (2)(B)
- xxxi 24 CFR § 903.7 (2)(C)(D)
- xxxii 24 CFR § 960.206 (a)(1)
- xxxiii 24 CFR § 960.103 (a)
- xxxiv 24 CFR § 960.206 (a)(4)
- xxxv 24 CFR § 960.206 (a)(3)
- xxxvi 24 CFR § 960.202 (b)(1)
- xxxvii 24 CFR § 960.206 (a)(4)
- xxxviii 24 CFR § 945.201 (iv), 945.201 (A)
- xxxix 24 CFR § 903.7 (j)(ii)



xl	24 CFR § 945.203 (c)(i)(ii)(iii)
xli	24 CFR § 945.303 (f)
xlii	24 CFR § 945.203 (6)(iii)(iv)
xliii	24 CFR § 945.303 (d)(ii)
xliv	24 CFR § 960.201 (a), 960.203 (a)(b)(c)(d)
xlv	24 CFR § 966.4 (l)(vi)
xlvi	24 CFR § 966.4 (l)(vi)(A)
xlvi	24 CFR § 960.203 (d)
xlvi	24 CFR § 960.208 (a)
xlix	24 CFR § 960.208 (b)
l	24 CFR § 960.208 (a)
li	24 CFR § 966.7
lii	24 CFR § 8.3
liii	24 CFR § 8.33; 24 CFR § 9.150 (a)(3)
liv	24 CFR § 9.131
lv	24 CFR § 964.140 (a)(3)
lvi	24 CFR § 966.4 (c)(3)
lvii	24 CFR § 960.202 (2)(iv)
lviii	24 CFR § 8.6
lix	24 CFR § 960.206 (e)(1)(ii)
lx	24 CFR § 8.6
lxi	24 CFR § 960.206 (e)(2)
lxii	24 CFR § 960.208 (a)
lxiii	24 CFR § 960.203 (c)
lxiv	24 CFR § 906.202 (b)(1)(i)
lxv	24 CFR § 960.202 (b)(2)(ii)
lxvi	24 CFR 960.202 (c)(1)
lxvii	24 CFR § 35, subpart A
lxviii	24 CFR § 35.1355(a)(7)
lxix	24 CFR § 960.259 and 24 CFR § 5.230
lxx	24 CFR § 960.259 (c)
lxxi	24 CFR § 960.259 (c)
lxxii	24 CFR § 5.508 (b)
lxxiii	24 CFR § 5.508 (c)(1)(i)
lxxiv	24 CFR § 5.508 (c)(1)(ii)
lxxv	24 CFR § 5.508 (g)(2)(ii)
lxxvi	24 CFR § 5.508 (b)(1)
lxxvii	24 CFR § 5.508 (b)(2)
lxxviii	24 CFR § 5.508 (d)
lxxix	24 CFR § 5.510
lxxx	24 CFR § 5.508 (e)



lxxx	24 CFR § 5.506
lxxxii	24 CFR § 5.609 (d)
lxxxiii	24 CFR § 5.609 (a)
lxxxiv	24 CFR § 5.854 (b)(1)
lxxxv	24 CFR § 5.857
lxxxvi	24 CFR § 960.259 (c)
lxxxvii	24 CFR § 5.903 (g)
lxxxviii	24 CFR § 960.205 (f)
lxxxix	24 CFR § 1.4 (b)(2)(ii)
xc	24 CFR § 966.4 (i)
xc	24 CFR § 966.4 (a)(v)
xcii	24 CFR § 966.4 (c)(3)
xciii	24 CFR § 5.609 (b)(2)
xciv	24 CFR § 5.609 (b)(3)
xcv	24 CFR § 5.609 (b)(6)(ii)
xcvi	24 CFR § 5.609 (c)(8)(v)
xcvii	24 CFR § 5.603
xcviii	24 CFR § 5.611 (a)(3)(ii)
xcix	24 CFR § 990.109 (b)(2)(iii)
c	24 CFR § 960.253 (d)
ci	24 CFR § 960.257
cii	24 CFR § 965.505 (a)
ciii	24 CFR § 965.253 (c)(3)
civ	24 CFR § 966.48 (i), 901.25 (a), 966.4 (h)(4)
cv	Sec. 18 U.S.C. 1437 (a)4(A)(iii), 24 CFR
cvi	24 CFR § 966.4 (c)(4)
cvii	24 CFR § 966.4 (c)(4)
cviii	24 CFR § 35.1345(a)(2)
cix	24 CFR § 966.4 (c)(4)
cx	24 CFR § 35.1345(a)
cxi	24 CFR § 35.1345(a)(2)
cxii	24 CFR § 966.4
cxiii	24 CFR § 966.4 (c)(4)
cxiv	24 CFR § 966.4 (c)(4)
cxv	24 CFR § 966.4
cxvi	24 CFR § 960.257
cxvii	Sec 8 42 U.S.C. 1437 (k)
cxviii	24 CFR § 960.259
cxix	24 CFR § 960.257
cxx	24 CFR § 960.257
cxxi	24 CFR § 960.253



cxii	24 CFR § 960.687
cxiii	24 CFR § 966.4
cxiv	24 CFR § 5.630 (b)(2)(i)(A)
cxv	24 CFR § 5.630 (b)(2)(D)
cxvi	24 CFR § 5.630 (2)(iii)(B)
cxvii	24 CFR § 960.257 (4)(b)
cxviii	24 CFR § 960.257 (4)(c)
cxix	24 CFR § 960.259 (a)(2)
cxx	24 CFR § 960.259 (a)(2)
cxxi	24 CFR § 960.259 (a)(2)
cxxii	24 CFR § 960.259
cxxiii	24 CFR § 5.615
cxxiv	24 CFR § 5.615 (2)
cxxv	24 CFR § 966.4 (a)(iv)
cxxvi	24 CFR § 965.502 (c)
cxxvii	24 CFR § 965.502 (c)
cxxviii	24 CFR § 5.632
cxxix	24 CFR § 960.603 (a)(1)
cxl	24 CFR § 960.605 (a)
cxli	24 CFR § 960.601
cxlii	24 CFR § 960.605 (c)(2)
cxliii	24 CFR § 960.605 (c)(3)
cxliv	24 CFR § 960.605 (c)(3)
cxlv	24 CFR § 960.607 (c)(1)
cxlvi	24 CFR § 960.603 (a)
cxlvii	24 CFR § 5.303 (a)(1)
cxlviii	24 CFR § 5.318 (a), 960.707 (a)
cxlix	24 CFR 35, subpart A
cl	24 CFR 35, subpart A
cli	24 CFR 35, subpart L
clii	24 CFR § 35.1345
cliii	24 CFR § 966.4 (a)(1)(i)
cliv	24 CFR § 966.4 (a)(1)(ii)
clv	24 CFR § 966.4 (a)(1)(v)
clvi	24 CFR § 966.4 (a)(1)(v)
clvii	24 CFR § 966.4 (a)(1)(v)
clviii	24 CFR § 966.4 (3)(b)(1)(ii)
clix	24 CFR § 966.4 (3)(b)(2)
clx	24 CFR § 966.4 (3)(b)(3), (5)
clxi	24 CFR § 966.4 (c)(4)
clxii	24 CFR § 966.7



clxiii	24 CFR § 35.1130
clxiv	24 CFR § 966.4 (e)(8)(i)
clxv	24 CFR § 966.4 (e)(8)(ii)(B)
clxvi	24 CFR § 966.5
clxvii	24 CFR § 35.1350
clxviii	24 CFR § 35.1345
clxix	24 CFR § 966.4 (h)(3)
clxx	24 CFR § 966.4 (j)(1)
clxxi	24 CFR § 966.4 (j)(3)
clxxii	24 CFR § 966.4 (k)(2)
clxxiii	24 CFR § 966.4 (l)(5)(i)(A)
clxxiv	24 CFR § 966.4 (l)(5)(i)(B)
clxxv	24 CFR § 966.4 (l)(5)(i)(B)
clxxvi	24 CFR § 966.4 (l)(5)(ii)(A)
clxxvii	24 CFR § 966.4 (l)(5)(i)(B)
clxxviii	24 CFR § 966.4 (l)(1)
clxxix	24 CFR § 966.4 (l)(3)
clxxx	24 CFR § 966.4 (l)(3)(c)(ii)
clxxxi	24 CFR § 966.4 (l)(3)(c)(iv)
clxxxii	24 CFR § 966.4 (l)(3)(c)(v)
clxxxiii	24 CFR § 966.4 (l)(5)(iii)(B)